



McSweeney Cynkar & Kachouroff, PLLC
TRIAL & APPELLATE LAWYERS

January 23, 2025

**The Honorable Jeffrey M. Bryan
The United States District Court for the District of Minnesota
316 N. Robert Street
St. Paul, MN 55101**

**Re: Smartmatic, et al. v. Lindell, et al., Case No. 22-cv-00098-JMB-JFD;
Defendants' Opposition and Response to "Plaintiffs' Motion to Exclude
the Second and Supplemental Declarations of Benjamin Cotton"**

Dear Judge Bryan,

The Court should deny Plaintiffs' efforts to exclude the December Declarations of Benjamin Cotton because they are a result of the Plaintiffs' misrepresentations to the court and are otherwise substantially justified and harmless to Plaintiffs. This Court has "wide discretion" in fashioning appropriate sanctions under these Rules. *Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 719 (D. Minn. 2022); citing *Wegener v. Johnson*, 527 F.3d 687, 692 (8th Cir. 2008). Rules 16(f) and 37(c)(1) both provide that Courts should not award sanctions for an untimely disclosure where the conduct at issue was "substantially justified or is harmless," or where "other circumstances make an award of expenses unjust." *Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 719 (D. Minn. 2022); citing Fed. R. Civ. P. 16(f); 37(c)(1). Defendants were substantially justified in presenting Cotton's declarations based on Plaintiffs' prior misrepresentations and withholding of discoverable material subject to inspection by Cotton. It would be entirely unfair to exclude this testimony considering Plaintiffs' discovery violations and lack of candor.

I. Relevant Background.

On February 1, 2023, Lindell and My Pillow filed their First Motion to Compel seeking information and an inspection of an exemplar BMD machine and any hardware and software from their BMD machines contained in Lindell's Requests for Production (Rule 34) and inspection of an "exemplar" machine and hardware (Defs. RFP Nos. 1, 8, 10). ECF No. 73. Plaintiffs responded that they did not have *any* exemplar BMD machine for inspection as all were in the possession of Los Angeles County in their warehouse. ECF No. 89 at pp. 18-19. In the hearing to resolve this, Judge Docherty asked plaintiffs specifically what Smartmatic had in their possession or control that "could be responsive" to Lindell and My Pillow's requests to inspect an exemplar machine or hardware and

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software from their BMD machines. *See* ECF No. 108 at 25:24 – 26:1, 28:15-17 (asking specifically whether all Smartmatic BMDs were in the possession of LA County). Plaintiffs stated that “all BMDs” were in L.A. County’s possession and implied the only things that *could be* responsive to Lindell’s requests were “spare parts” like “screws or plastic facing.” *Id.* at 28:18-29:8. Based on these statements, Judge Docherty denied Lindell’s First Motion to Compel any production or inspection of an exemplar machine or hardware, noting that Smartmatic could not produce what they do not have. *See* ECF No. 160 at pp. 15,16 & 19.

Without any method for Lindell’s expert Ben Cotton to inspect any exemplar machine or hardware by Smartmatic, Cotton provided an expert report in September 2023. Cotton Report, Sept. 22, 2023, ECF No. 416-2. However, the same day, Plaintiffs provided their expert report by Dr. Sherman who stated that he inspected a substantially similar BMD machine (BMD150) provided by Smartmatic.¹ Sherman Report, Sept. 22, 2023, ¶25, note 2. After providing Sherman’s report, Smartmatic only then offered Cotton an “external walkaround” of the “similar” machine Dr. Sherman had inspected. *See* ECF No. 416-5, Ex. 2, Loftus 10.2023 Letter. This timeframe was the *first time* Plaintiffs admitted that they *did* have an exemplar or similar BMD machine or hardware in their possession—information that they specifically (and presumably intentionally) withheld from Judge Docherty and Lindell in February 2023. *See e.g.* ECF No. 108 at pp. 25-27.

Cotton stated the inspection parameters would be insufficient to assess any forensic information or vulnerabilities and Plaintiffs never offered any internal forensic inspection of their similar BMD150 machine to Defendants.² *See* Attach. 1, Cotton Dep., at pp. 18-19. During his deposition, Ben Cotton testified to various ways the BMD machines with the specs provided by Smartmatic and in their user manual would be vulnerable to network breaches and could not be air gapped. *See id. e.g.* 43:11-23, p. 17 & 92.

¹ The exact BMD model used in the 2020 election was Smartmatic’s BMD100 which plaintiffs contend they have no custody, possession or control over. The BMD150 was not used in the 2020 election, but Smartmatic notes that the machine and hardware are in their possession and is “substantially similar” to the BMD100 that was used in the 2020 election. During arguments on Lindell’s First Motion to Compel (ECF Nos. 73 & 108), the Court gave Plaintiffs an opportunity to say where there was *anything* in their possession or control that could be produced for inspection (which necessarily would include a “substantially similar” BMD150 model), and Plaintiffs stated that “all BMDs” were in Los Angeles.

² *Id.*, footnote 1.

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Cotton also testified specifically that, given the opportunity, he would be prepared to rebut Sherman's opinions regarding his "inspection" of the BMD150 and connection to the internet. *See* Defs. Attachment 1, Cotton Dep., at pp. 45 – 47.

In November 2024, Plaintiffs filed a motion to exclude Cotton's report and testimony, stating that the Defendants' "never requested to inspect their exemplar BMD150." *See* ECF No. 416-5, ¶¶7-8. In support of Plaintiff's summary judgment motion, Sherman filed a declaration stating that there was "no breach" on the BMD machines based, in part, on his "inspection" of Smartmatic's BMD150—the exemplar machine that Smartmatic concealed from and misled the Court and Defendants about in February 2023. *See* ECF No. 395-60 at ¶3.

To rebut Plaintiffs and Sherman's statements, Lindell and My Pillow filed two declarations from Cotton reiterating his original opinions and testimony criticizing Plaintiffs' insufficient inspection offering and discussing network vulnerabilities based on specs and user manuals relating to Plaintiffs' BMD machines. *See* ECF Nos. 464 and 481.

Now, Plaintiffs have filed a motion demanding this court exclude Cotton's December declarations. *See* ECF Nos. 488 & 493. Not only should the Court disregard or otherwise deny Plaintiffs motions (including their motion to exclude Cotton's testimony altogether), but the Court should dismiss this case entirely or alternatively issue adverse jury instructions because Plaintiffs intentionally misled Lindell and the Court about their possession of "substantially similar" hardware presumably to obstruct discovery, *exhaust Lindell's resources*, and conceal discoverable information. These obstructive and withholding tactics require, at a minimum, denial of Plaintiffs' motion to exclude Cotton's December 2024 declarations.

II. Cotton's December 2024 Declarations were substantially justified because of Smartmatic's prior obstructive and misleading disclosures and Dr. Sherman's additional information.

Lindell and My Pillow were substantially justified in introducing Cotton's December Declarations because Plaintiffs' obstructed inspection of material equipment by misleading the Court and Lindell and the Plaintiff's summary judgment motion introduced a new factual basis to support falsity. Plaintiffs cite *Meyer v. Currie Tech Corp* in asking this Court to exclude Cotton's declarations, but *Meyer* is distinguished from the facts here. 329 F.R.D. 228, 233 (D. Neb. 2018). In *Meyer*, the Court excluded the late submissions because the party offering the reports did not provide *any justification* for their disclosure. That is

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not the case here, and Lindell and My Pillow are substantially justified in offering Cotton's declarations.

First, Cotton's December Declarations are substantially justified because Plaintiffs withheld and misrepresented the existence of their hardware and BMD150 machine to Lindell *and Judge Docherty* during the parties' hearing on Lindell's First Motion to Compel production and inspection of an exemplar machine and hardware in February 2023.³ See ECF Nos. 73, 89, 108. Now, Plaintiffs contend that Cotton "should have" produced a rebuttal report to address Sherman's reliance on his BMD150 inspection. This is outrageous because such costly supplementation should never have been required had Plaintiffs not misled the Court in opposing Lindell's First Motion to Compel (ECF No. 73), only offering an inspection around the time they learned that Lindell's lead counsel was withdrawing from the case.⁴

Plaintiffs' efforts to exhaust Lindell's resources and engage in "gotcha" discovery tactics based on material misrepresentations and withholding is improper, sanctionable, and should doom Plaintiffs' case to dismissal. *See* Fed. R. Civ. P. 37(c)(1) and 37(b)(2)(A)(v). Essentially, Plaintiffs argue that Lindell should be denied any clarifying expert information from Cotton because Plaintiffs were "successful" in misleading Lindell and the Court about their possession of an exemplar machine until they filed their expert report. Indeed, Cotton's purported supplemental report regarding BMD150 would not have

³ In Lindell and My Pillow's First Motion to Compel (ECF No. 73), Lindell sought to compel production and inspection of an "exemplar" BMD machine and hardware or software relating to his statements about Smartmatic's machines. Plaintiffs stated they had "no exemplar machine or hardware" in their possession, custody, or control" and the court (Judge Docherty) denied Lindell's motion in reliance on these statements. However, in Plaintiffs' motion to exclude Cotton's testimony and report (ECF No. 416), Plaintiffs' counsel asserted that they "offered" an exemplar machine for inspection, but that Defendants never requested to inspect that machine. *See* ECF No. 416-5. This is a misleading representation.

⁴ ECF Nos. 89 & 108 are Plaintiffs' opposition to Defendants' RFPs seeking production and inspection of an exemplar voting machine and any hardware wherein Plaintiffs stated they had no such material in their possession nor anything substantially responsive to these requests. *See* ECF No. 416-5; *but see* ECF No. 108, at pp. 25-29. Plaintiffs contend that Defendants "never requested to inspect" any exemplar machine or hardware in their possession. This is inaccurate as it was requested in Defendants' RFPs 1, 8 & 10 at issue in Defendants' First Motion to Compel (ECF No. 73). Notably, Plaintiffs' "offer" for Cotton to inspect the BMD150 that Defendants' "did not respond to" occurred months after Defendants' First MTC, and around the time that Plaintiffs learned Lindell's lead counsel was withdrawing from this case. *See e.g.* ECF No. 225.

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been required if plaintiffs had not concealed this machine from Lindell and the court in opposing Defendants' Requests for production and inspection in February 2023. *See* ECF No. 89, at pp. 18-19, ECF No. 108, at 25:24-26:1, 28:15-29:8..

Plaintiffs are demanding a highly prejudicial result—namely that, despite their withholding, misrepresentations, and nonuniform inspections; that not only should Lindell be deprived of clarifying declarations at summary judgment; but should also be deprived completely of his cyber security expertise. *See e.g.* Pls. Mot Exclude Cotton & ECF Nos. 488 & 493. Plaintiffs should not be rewarded for misleading the court about their possession of relevant equipment that Mr. Cotton could have inspected prior to his expert report.

Second, Lindell had the right to rebut Sherman's new information that was not otherwise included in his expert report. Plaintiffs assert that Dr. Sherman's declaration did not raise any new points from his expert report. But, Dr. Sherman's declaration made distinct points that were not contained in his expert report including (1) new details regarding alleged "post-tabulation audits" of 43 states, and (2) description of the 1% manual audit in LA County – a new distinct methodology to support his findings pertaining to Smartmatic's BMD machine. *See* Sherman Decl, ECF No. 395-60 ¶¶3, 11-13.

Lindell is entitled to rebut these distinct points with a declaration from Cotton, and the Court should not exclude this declaration. *See Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 718–19 (D. Minn. 2022) (discussing that Rule 26(e) allows a party to submit a supplemental expert report when an expert becomes aware of new information that was unavailable at the time of initial report). Indeed, neither Lindell *nor Judge Docherty* was aware that Plaintiffs possessed any exemplar or similar hardware or machine for an inspection at the time of Cotton's original report. *See* ECF No. 89, 108; *but see* ECF No. 416-5.⁵ At no point in this litigation, prior to summary judgment, have Plaintiffs stated they intended to rely on Dr. Sherman's assessment of their exemplar BMD150 to support any reliance on other state audits and the 1% manual audit in LA County.

Further, in discovery, Lindell requested *all facts* that Plaintiffs intended to rely on to support their contention that Lindell's statements about their machine network breach or inherent vulnerabilities were false. *See* Defs. Mot. Summ. Judg., Ex. D, ECF No. 439-4, at p. 9; *see also* Defs. Second Mot. to Compel, ECF No. 149. At no point in Plaintiffs' six supplemental interrogatory responses, nor at any point, did Plaintiffs state they would rely on Dr. Sherman's inspection of the BMD150 to prove falsity of Lindell's statements about

⁵ *See id.*, footnote 2.

network vulnerabilities on their machines. *Id.* Accordingly, Defendants’ introduction of the December 2024 declarations by Cotton (ECF Nos. 464 and 481) was substantially justified based on Plaintiff’s new information and their prior misrepresentations that precluded Defendants’ expert from inspecting the exemplar machine and hardware in Smartmatic’s possession.

III. Even if the Court held that Cotton’s December Declarations were improper, permitting Cottons’ December Declarations are harmless to Plaintiffs.

Even if the court found that Cotton’s December declarations were not substantially justified, his testimony there is harmless because he does not alter from his original opinions or methodology, maintains his testimony from his deposition, and responds to new information from Plaintiffs summary judgment filings. This court has permitted supplemental reports even a year after the discovery deadline *if there is no prejudice to Plaintiffs*. *Rao v. St. Jude Med. S.C., Inc.*, 631 F. Supp. 3d 678, 719 (D. Minn. 2022) (noting that *even if* 3rd and 4th supplemental reports were not proper, there was no prejudice plaintiffs would suffer). Defendants’ assertion that they will have to “re-depose” Cotton because of the December declarations is meritless because nearly all of Cotton’s statements were reiterated or otherwise testified to in his original report and deposition.

Most of Cotton’s statements in his December Declarations clarified and reiterated his original opinions and testimony, were already known by Plaintiffs, and therefore, do not prejudice plaintiffs nor require another deposition of Cotton. Plaintiffs are incorrect that Cotton’s December declarations are an “unfair surprise” because Cotton did not alter or give any testimony that Plaintiffs were previously unaware of. This distinguishes this issue from *Williams v. TESCO Servs., Inc.* cited by Plaintiffs. 719 F.3d 968 (8th Cir. 2013). In *Williams*, the court excluded a supplemental report because it “altered” the expert’s opinion. *Id.* Here, however, Cotton’s declarations did not alter his opinion but doubled down on his original statements *and deposition testimony*. Indeed, Cotton’s declarations clarified and reiterated many points made in his original declaration report *and* from his deposition testimony shown, in part, in the tables below.

TABLE 1
(SEPT. 2023 REPORT COMPARISON TO DEC. DECLS. COTTON)

<u>Cotton Original Report</u> <u>Sept. 2023</u>	<u>Decl. 1 (ECF No. 464)</u>	<u>Decl. 2 (ECF No. 481)</u>
Cotton Subject: Cybersecurity vulnerabilities in Voting Systems		
Page 5, ¶ 18: Over 290 vulnerabilities in the VSAP system, including USB ports and hardcoded passwords. Page 6-7, ¶ 20-21: Failures in log management, cryptographic compliance, and antivirus updating.	Page 3, ¶ 8-9: Concerns about insufficient forensic access to voting systems, preventing full analysis of vulnerabilities.	Page 4, ¶ 7: Discussion about cybersecurity risks due to lack of proper testing and forensic examination of Smartmatic systems.
Cotton Subject: Inadequate Testing and Oversight		
Page 7, ¶ 21: Describes failures to update antivirus definitions and patch operating systems across systems. Page 13, ¶ f: Discusses weaknesses in air-gapped systems.	Page 4, ¶ 14: Notes the lack of adequate forensic inspection, particularly regarding critical components like Wi-Fi modems.	Page 5, ¶ 17: Highlights the use of a mismatched model (BMD150 instead of BMD100) for inspection, questioning testing adequacy.
Cotton Subject: Questionable Audit Trails and Log Management		
Page 10, ¶ e: Lack of centralized log management and its impact on cybersecurity detection and audits.	Page 5, ¶ 19: Insufficient log retention and preservation to meet cybersecurity standards.	Page 6, ¶ 22: Raises concerns about Smartmatic's lack of proper forensic preservation for effective audit trails.
Cotton Subject: Physical Security and Inspection Restrictions		
Page 5, ¶ 16(k): No lockout mechanisms for failed password attempts.	Page 4, ¶ 16: Prevented physical inspection of critical components (e.g., Wi-Fi modems) due to restrictions by Smartmatic.	Page 5, ¶ 18: Criticizes the use of the BMD150 model, which was not used in the actual election, for inspection purposes.

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Cotton Subject: Claims of Vote Manipulation and Errors		
Page 8-9, ¶ 26(a)-(c): References incidents of vote flipping and misallocation in Antrim County, Michigan, and DeKalb County, Georgia.		Page 9, ¶ 26(c): Highlights how such errors and misconfigurations align with broader systemic concerns in voting systems.
Lack of Transparency and Comprehensive Access		
Page 6, ¶ 20(b): Criticizes Smartmatic for not producing systems for full forensic examination.	Page 4, ¶ 16: Notes restrictions imposed by Smartmatic that prevent meaningful analysis.	Page 7, ¶ 21: Discusses the impossibility of making cybersecurity determinations without proper forensic access.

TABLE 2
(AUG. 2024 DEPOSITION TESTIMONY COMPARISON TO DEC. DECLS. COTTON)

<u>Cotton Deposition</u> <u>Aug. 2024</u>	<u>Decl. 1 (ECF No. 464)</u>	<u>Decl. 2 (ECF No. 481)</u>
Criticism and rebuttal topics from Cotton regarding Dr. Sherman's report or methodology of network security. Insufficiency of October 2023 inspection protocol for the BMD150 (external permission for Cotton after original September report completed). Insufficiency of reliance on external sources. <i>See</i> Attach. 1, Cotton Dep. at pp. 45-47, 17:8-21:6, ant p. 184 (re: opinion on external reliance)	Insufficient Forensic Imaging, Incorrect model for inspection, physical restraints on inspection (no forensic or internal inspection), Sherman's reliance on "manuals" or external statements regarding other audits criticism. ECF No. 464 at p. 4, ¶¶15-18; p. 5 ¶¶17 & 19.	Direct Criticism of Dr. Alan Sherman's Inspection Methods: Highlights flaws in Dr. Sherman's methodology, particularly any reliance on external physical examination of BMDs that Cotton was offered which Cotton states are inadequate for assessing breaches or vulnerabilities. ECF No. 481 at p. 6, ¶22.

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Information regarding network vulnerabilities learned in Antrim County, Michigan and other counties with similar software. <i>See e.g. id.</i> at pp. 100-104, 155-168.		Flipping of Votes in Specific Elections: Detailed examples of vote flipping in counties w/ similar machines: DeKalb, Williamson, Antrim (2020-2022) supported by root-cause analyses and misconfigurations. <i>Id.</i> at p. 9, ¶¶26(a)-(c).
Deposition testimony and opinion regarding Smartmatic and other voting machine Network vulnerabilities from BMD and VSAP systems. <i>Id.</i> at 100:3-104:8, 105:12-111:15, 112:16-117:10, 114:9-115:22, 118:5-121:14. Information regarding original report discussion of vulnerabilities to unauthorized access, vote manipulation based on evaluations of system manuals and source code from similar machines and the possibility of remote access of databases. <i>Id.</i> at 16:19-17:22 & 39:8-41:6, 88:4-91:6, 123:22-126:1, 138:5-141:20 .		Vulnerability concerns regarding software and chain of custody concerns: Raises the possibility of memory scraping malware being injected into BMDs to manipulate memory (noting another example of a QR code) and Plaintiffs failure to prove or establish secure chain of custody for BMDs. <i>Id.</i> at p. 8, ¶¶25 and v.

Clearly, Plaintiffs are incorrect that they must now conduct another deposition of Cotton based on his December declarations because Cotton testified to nearly everything

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raised in his December declarations and has otherwise already provided consistent and clarifying information in his original analysis and testimonies that does not prejudice Plaintiffs.

Further, Plaintiffs make *two false assertions* in their letter to the Court when they stated that Cotton's original report never referenced (1) cyber security vulnerabilities of their BMD machines nor (2) Cotton's work in Antrim County, Michigan. These statements are inaccurate. Here, Cotton testified and opined originally that the BMD machines had inherent cyber security vulnerabilities in his deposition and throughout his original report. *See e.g.* Cotton Report, ECF No. 416-2, at pp. 5-7, 10, 13; *see also* Cotton Dep. 181:25 – 182:24 (discussing vulnerabilities in ballot marking devices through configuration of software). Further, Cotton's original report discussed the Antrim County, Michigan situation, among other specific examples. *Id.* at pp. 8-9, ¶ 26(a)-(c). In his deposition, Plaintiffs' counsel specifically deposed Cotton about Antrim County, Michigan and had sufficient opportunities to seek this information. *See* Attach. 1, Cotton Dep. at pp. 155 – 168. These are inaccurate statements that doom Plaintiffs' motion and entitle Defendants to attorney fees and costs for having to respond to this. Unlike Lindell, plaintiffs have had the exact same legal counsel throughout this litigation. There is no excuse to misrepresent facts unless Plaintiffs hope to "pull one over" on Lindell's new legal counsel in hopes they will not be discovered.

Alternatively, if the Court disregards any portion of Cotton's December 2024 Declarations (ECF Nos. 464 and 481) for purposes of summary judgment, the Court should also disregard all facts offered by Plaintiffs to prove falsity of Lindell's claims relating to their machine network security or hacking in fairness. It would be very prejudicial to deny Lindell any rebuttal at summary judgment where the Plaintiffs rely on facts that were withheld, misrepresented to the court, and otherwise never supplemented as far as their factual reliance. If the Court finds that any portion of Cotton's December declarations should be disregarded for purposes of summary judgment, Lindell and My Pillow request that the Court similarly disregard all facts and information offered by Plaintiffs about the security of their BMD machines to prove the falsity of Lindell's statements.

Finally, Defendants are entitled to dismissal of this matter entirely or striking Plaintiffs' pleadings or evidence relating to security of their BMD machines under Rule 37(c)(1) and 37(b)(2)(A)(v) because of Plaintiffs' material misrepresentations to this Court specifically in light of their intent to deprive the Defendants of expert testimony that relates to their prior withholding and misstatements. Plaintiffs bear the burden of proving falsity regarding network vulnerabilities of their BMD machines, and by inaccurately saying they had no possession of any exemplar machine or hardware, while providing their exemplar

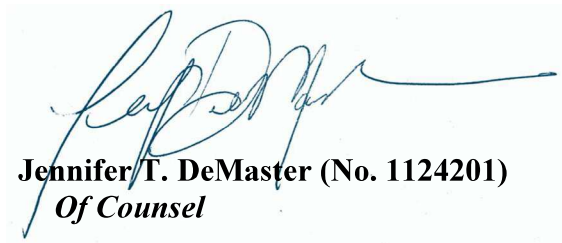
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machine to *their* expert for inspection and then demanding exclusion of any responsive information, Plaintiffs' bad faith, dilatory tactics, and lack of candor to the Court cannot go unaddressed. Defendants are also entitled to any attorney fees and costs for responding to this motion and any other incurred costs that the Court deems appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Kachouroff", with a large, stylized flourish at the end.

Christopher I. Kachouroff, Esq. (No. 44216)

A handwritten signature in blue ink, appearing to read "Jennifer T. DeMaster", with a long horizontal flourish extending to the right.

Jennifer T. DeMaster (No. 1124201)
Of Counsel

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ATTACHMENT 1

BENJAMIN COTTON
Smartmatic USA Corp vs Michael J. Lindell

August 08, 2024

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1IN THE UNITED STATES DISTRICT COURT

2FOR THE DISTRICT OF MINNESOTA

3

4SMARTMATIC USA CORP.,

5SMARTMATIC INTERNATIONAL

6HOLDING B.V. and SCO

7CORPORATION LIMITED,

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9Plaintiffs,

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11vs. Case No. 0:22-cv-00098-WMW-JFD

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13MICHAEL J. LINDELL and MY

14PILLOW, INC.,

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16Defendants.

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19VIDEOTAPED DEPOSITION OF BENJAMIN COTTON

20THURSDAY, AUGUST 8, 2024

219:35 a.m. PST

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1APPEARANCES

2

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19ALSO PRESENT: Don Savoy, Videographer

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1BE IT REMEMBERED THAT, the videotaped deposition of

2BENJAMIN COTTON was reported by Mary C. Soldati,

3Registered Professional Reporter and Certified Shorthand

4Reporter, on Thursday, August 8, 2024, commencing at the

5hour of 9:35 a.m. PST, the proceedings being reported

6remotely from Portland, Oregon.

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<p style="text-align: right;">Page 13</p> <p>1 A. I was testifying on behalf of 2 Kurt Olsen and Andrew Parker. 3 Q. And Kurt Olsen and Andrew 4 Parker in that matter were the attorneys for 5 Kari Lake; is that right? 6 A. Correct. 7 Q. And a complaint had been lodged 8 by the Bar against Mr. Parker and Mr. Olsen; 9 is that right? 10 A. I'm not sure who lodged the 11 complaint. 12 Q. And what was the nature of your 13 testimony on behalf of those individuals? 14 A. My testimony hinged around the 15 cyber security weaknesses and current state 16 of the election systems in 2020. 17 Q. And was that in Maricopa County 18 in Arizona? 19 A. That is correct. 20 Q. And then you said, I believe, 21 you also provided deposition testimony in a 22 Michigan case; is that right? 23 A. That is correct. 24 Q. And is that the Antrim County 25 litigation?</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. And so was that as a fact 2 witness, as opposed to an expert witness? 3 A. Yes. 4 Q. When did you provide that 5 testimony? 6 A. I haven't provided that 7 particular testimony. The case has been 8 continued on a repeated basis. 9 Q. Okay. So there's the Arizona 10 case, there's the State of Michigan vs. 11 Stephanie Lambert, and also the Antrim County 12 litigation. 13 Any other county litigation in 14 which you've provided deposition testimony? 15 And I'll go back to -- since 2020. 16 A. I have provided declarations in 17 the State of Georgia as well. 18 Q. And were you deposed in the 19 State of Georgia case, in the Raffensperger 20 case? 21 A. Yes, the Curling v. 22 Raffensperger case. 23 Q. And what was the topic of your 24 deposition in the Curling v. Raffensperger 25 case?</p>
<p style="text-align: right;">Page 14</p> <p>1 A. I provided -- I did provide 2 depositions and sworn affidavits in the 3 Antrim case. But there's also a case, State 4 of Michigan versus Stephanie Lambert, in 5 which I was called as a witness. 6 Q. What is nature of the State of 7 Michigan versus Stephanie Lambert litigation? 8 A. I can tell you what my part in 9 it was, and that is the -- once again, the 10 state of the electoral systems as it pertains 11 to cyber security and findings of election 12 data. 13 Q. Do you know what the case 14 against Ms. Lambert -- you know, what the 15 claims are against Ms. Lambert? 16 A. I don't know exactly what they 17 are, but I believe they hinge around 18 potential unauthorized access to voting 19 systems. 20 Q. And did your testimony in that 21 case deal with the access to the voting 22 systems? 23 A. I have not testified to that 24 effect yet. However, the prosecution did 25 call me as a witness.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. It primarily hinged around 2 cyber security findings, based on my 3 examination of a Coffee County EMS server. 4 Q. And did that testimony in any 5 way have to do with whether or not there was 6 unauthorized access to the voting systems? 7 A. I was asked how I obtained 8 access to the EMS images. 9 Q. Any other instances of a 10 deposition or testimony you've given over the 11 last four years related to election security? 12 A. I believe that covers it. 13 Q. I want to talk a little bit 14 about how you became involved in this 15 particular litigation. 16 When were you initially 17 contacted to serve as an expert witness in 18 this case? 19 A. Specific to Smartmatic; is that 20 correct? 21 Q. Yeah, the Smartmatic versus 22 Lindell litigation. 23 A. Okay. As near as I recall, it 24 would have been the spring of '23. I was 25 asked by Andrew Parker to review some</p>

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Smartmatic USA Corp vs Michael J. Lindell

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<p style="text-align: right;">Page 17</p> <p>1 documents pertaining to the LA County 2 election systems. 3 Q. And at the time Mr. Parker 4 asked you to review those documents, were you 5 given an assignment of what you are going to 6 be looking for, what he's going to ask you to 7 potentially opine on? 8 A. He asked me to pay particular 9 attention to, one, was the system certified 10 by the EAC; two, the vulnerability in 11 assessment reports by the SEC; three, 12 determine whether or not these systems could 13 be connected to the Internet via wireless or 14 via ethernet connections; determine whether 15 or not those connections were air-gapped or 16 part of the public Internet. 17 Q. Was your assignment to kind of 18 review those documents and make a 19 determination as to whether or not the -- you 20 know, you said whether or not they could be 21 connected to the Internet. 22 Were you asked to make a 23 determine as to whether or not they were 24 connected to the Internet? 25 A. If I could, from the documents.</p>	<p style="text-align: right;">Page 19</p> <p>1 report, through today, that you have not 2 chosen to inspect that ballot-marking device? 3 A. Well, I would say that that 4 question is a little bit misphrased. It's 5 not that I haven't chosen to. It's that, to 6 my knowledge, it was never an option to 7 examine it. 8 Q. Okay. So you were never told 9 that Smartmatic had offered the opportunity 10 to examine that device? 11 A. No. The last information that 12 I had surrounding this issue was they were 13 trying to work out some protocols, and then 14 those protocols were not acceptable to a 15 thorough examination of the system. 16 And at that point, I believe 17 Parker Daniels was removed from the case as 18 representation for Mr. Lindell. So I don't 19 know where that issue stands at this point. 20 Q. Going back, then, to your 21 initial retention in this case, at the time 22 Mr. Parker asked you to review the documents 23 related to LA County, were you already 24 working with Mr. Parker with respect to other 25 litigation?</p>
<p style="text-align: right;">Page 18</p> <p>1 At that particular time -- well, still, to my 2 knowledge -- there has been no system 3 actually produced by Smartmatic to -- to 4 actually examine to determine, you know, the 5 forensics artifacts that remain on that 6 system. 7 Q. Are you aware that Smartmatic 8 has offered the ability to examine a BMD 9 machine that is substantially similar to the 10 ones used in the November 2020 election? 11 A. Prior to the Parker Daniels law 12 firm exiting, there was discussion about that 13 being a possibility. 14 Q. Did you ever follow up to 15 determine whether or not to do that, to 16 perform that inspection? 17 A. I have not been provided that 18 opportunity yet. 19 Q. If you were provided the 20 opportunity, if it was offered, would you 21 take it? 22 A. I would. 23 Q. And do you have any 24 understanding as to why since, you know, 25 September of 2023 when you produced your</p>	<p style="text-align: right;">Page 20</p> <p>1 A. I was. I was working with Mr. 2 Parker with respect to the Arizona 3 litigation. 4 Q. And prior to the Arizona 5 litigation, had you ever worked with Mr. 6 Parker before? 7 A. I had not. 8 Q. How did you come to work with 9 Mr. Parker on the Arizona litigation? 10 A. I'm not 100 percent sure as to 11 what their thought process was. I had been 12 selected by the Arizona Senate to perform a 13 forensics audit of the Maricopa County 14 election systems in 2021. 15 And I believe that was the 16 impetus for them reaching out to me, is 17 because I did have that forensics knowledge 18 of the systems. 19 Q. Do you know a gentleman named 20 Patrick Byrne? 21 A. Yes. I have met Patrick Byrne. 22 Q. And how do you know Patrick 23 Byrne? 24 A. I was introduced to Patrick 25 Byrne through Stephanie Lambert.</p>

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<p style="text-align: right;">Page 21</p> <p>1 Q. And who is Stephanie Lambert?</p> <p>2 A. Stephanie Lambert is the</p> <p>3 attorney that engaged me for the Bailey v.</p> <p>4 Antrim County litigation.</p> <p>5 Q. And what was the nature of your</p> <p>6 interaction with Mr. Byrne?</p> <p>7 A. It was social. And I believe</p> <p>8 that Mr. Byrne was funding some of the</p> <p>9 efforts to assure voter integrity.</p> <p>10 Q. Have you discussed your</p> <p>11 engagement in this case with Mr. Byrne?</p> <p>12 A. I have not.</p> <p>13 Q. Do you know a Matt DePerno?</p> <p>14 A. I do.</p> <p>15 Q. Who is Matt DePerno?</p> <p>16 A. Matt DePerno is the other</p> <p>17 attorney who engaged me with respect to the</p> <p>18 Antrim County litigation.</p> <p>19 Q. Have you had any conversations</p> <p>20 with Matt DePerno regarding your engagement</p> <p>21 in this case?</p> <p>22 A. I have not.</p> <p>23 Q. Do you know a gentleman named</p> <p>24 Conan Hayes?</p> <p>25 A. Again, please?</p>	<p style="text-align: right;">Page 23</p> <p>1 A. I was asked to review some</p> <p>2 data. The data that I got was not</p> <p>3 satisfactory for me, so I did not participate</p> <p>4 in that event.</p> <p>5 Q. Was that data the alleged PCAP</p> <p>6 data -- P-C-A-P -- data that Mr. Lindell</p> <p>7 claimed to have regarding the stolen</p> <p>8 election?</p> <p>9 A. Yes. That data was supplied to</p> <p>10 me via Dennis Montgomery and Conan -- I</p> <p>11 apologize, I don't remember his last name --</p> <p>12 but this -- the Conan individual.</p> <p>13 Q. And you said that the data that</p> <p>14 you were asked to review was not satisfactory</p> <p>15 to you.</p> <p>16 What was not satisfactory about</p> <p>17 the data, in your opinion?</p> <p>18 A. It appeared incomplete, and the</p> <p>19 small subset of data that I was provided did</p> <p>20 not appear to contain election data.</p> <p>21 Q. Did you inform anyone of your</p> <p>22 conclusions regarding this -- the data that</p> <p>23 you were asked to review?</p> <p>24 A. I spoke to a gentleman by the</p> <p>25 name of Walden, I believe his last name was,</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. Conan Hayes.</p> <p>2 A. I know of him. I do not know</p> <p>3 him personally.</p> <p>4 Q. Have you ever spoken with Mr.</p> <p>5 Hayes?</p> <p>6 A. I believe I have spoken to Mr.</p> <p>7 Hayes twice in the past.</p> <p>8 Q. And do you recall when about</p> <p>9 you spoke with Mr. Hayes?</p> <p>10 A. It was concerning the South</p> <p>11 Dakota symposium that Mr. Lindell put on.</p> <p>12 Q. And was that the cyber</p> <p>13 symposium in August of 2021?</p> <p>14 A. That sounds about right. I</p> <p>15 don't have the exact dates in front of me.</p> <p>16 Q. My understanding is, he does</p> <p>17 the symposium kind of each year, in the fall.</p> <p>18 And so I was just curious, you know, if it</p> <p>19 was three years ago, if it was this past, you</p> <p>20 know, 2023?</p> <p>21 A. It was the first one that he</p> <p>22 did.</p> <p>23 Q. Okay. And did you yourself</p> <p>24 have any involvement in that first cyber</p> <p>25 symposium?</p>	<p style="text-align: right;">Page 24</p> <p>1 who was kind of shepherding that process.</p> <p>2 And I explained my concerns to him.</p> <p>3 Q. Have you ever, since that time,</p> <p>4 been asked to review any data provided by Mr.</p> <p>5 Dennis Montgomery?</p> <p>6 A. I have. Some --</p> <p>7 (Cross talk.)</p> <p>8 BY MR. FREY:</p> <p>9 Q. Go ahead. Go ahead.</p> <p>10 A. Subsequently, approximately</p> <p>11 about a year later, I was asked to take a</p> <p>12 look at another set of PCAP data. And once</p> <p>13 again, my analysis of the PCAP data was that</p> <p>14 it was not sufficient to do a form analysis</p> <p>15 on for the purposes that they wanted me to do</p> <p>16 that.</p> <p>17 Q. And were you asked to perform</p> <p>18 that analysis as part of your role in this</p> <p>19 case?</p> <p>20 A. No.</p> <p>21 Q. Who asked you to perform that</p> <p>22 analysis?</p> <p>23 A. I believe that was Kurt Olsen.</p> <p>24 Q. Did you inform Mr. Olsen that</p> <p>25 the data was insufficient to complete the</p>

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<p style="text-align: right;">Page 37</p> <p>1 provided by Mr. Montgomery, were you</p> <p>2 compensated for that time?</p> <p>3 A. Mr. Olsen would have</p> <p>4 compensated me for that, yes. I think it was</p> <p>5 about three hours on that.</p> <p>6 Q. Okay. And you just charge your</p> <p>7 kind of \$350 per hour for however many hours</p> <p>8 you spent looking at it?</p> <p>9 A. Correct.</p> <p>10 Q. Are you -- have you been</p> <p>11 retained as an expert by Mr. Lindell in</p> <p>12 litigation filed by Dominion?</p> <p>13 A. No.</p> <p>14 Q. Have you been retained by</p> <p>15 Mr. Lindell or by attorneys on Mr. Lindell's</p> <p>16 behalf in litigation filed by Mr. Kumer?</p> <p>17 A. No.</p> <p>18 Q. So I want to go back to your</p> <p>19 declaration here, Exhibit 705.</p> <p>20 And I believe you said that</p> <p>21 when you were initially approached by Mr.</p> <p>22 Parker to work on this, you were asked to</p> <p>23 review certain documents and look for certain</p> <p>24 items; is that right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 39</p> <p>1 determination on -- based on a review of the</p> <p>2 documents and the vulnerability assessments</p> <p>3 that I reviewed.</p> <p>4 Q. And so you were, then -- and</p> <p>5 that's what I guess I am trying to</p> <p>6 crystallize here, is your opinions in this</p> <p>7 case relate to possibilities or potential</p> <p>8 vulnerabilities, correct? Not actual fraud</p> <p>9 occurring or actual remote access having</p> <p>10 taken place; is that right?</p> <p>11 A. Well, the basis for that was,</p> <p>12 it was my understanding that Smartmatic was</p> <p>13 resisting producing an actual system to be</p> <p>14 examined by experts.</p> <p>15 And the purpose of the</p> <p>16 declaration was to attempt to get actual</p> <p>17 voting systems for the purposes of forensic</p> <p>18 examination as that next step.</p> <p>19 Q. Do you understand that LA</p> <p>20 County is the entity that owns those actual</p> <p>21 voting machines?</p> <p>22 A. Yes.</p> <p>23 Q. And do you understand that --</p> <p>24 that Smartmatic would not have the ability to</p> <p>25 turn over the voting machine, that it would</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. And Mr. Parker, then -- were</p> <p>2 you then assigned to kind of write up your</p> <p>3 findings?</p> <p>4 A. I reviewed the documents. I</p> <p>5 briefed the attorneys on my findings, and was</p> <p>6 asked to put that into deposition form -- or</p> <p>7 declaration form, I'm sorry.</p> <p>8 Q. And did your assignment ever</p> <p>9 include making a determination as to whether</p> <p>10 or not there was voting manipulation in the</p> <p>11 -- in LA County in the November 2020</p> <p>12 election?</p> <p>13 A. I believe it was mentioned as</p> <p>14 an end goal, but, you know, I deal in facts</p> <p>15 -- forensics facts. And without the</p> <p>16 examination of a device that was actually</p> <p>17 utilized in that litigation -- or in that</p> <p>18 election, you know, I'm not able define that</p> <p>19 there was fraud.</p> <p>20 What I was able to determine</p> <p>21 is, Is there a possibility of remote access?</p> <p>22 Is there a possibility of manipulation of the</p> <p>23 databases on the DMGs and those types of</p> <p>24 things.</p> <p>25 So I was able to make a</p>	<p style="text-align: right;">Page 40</p> <p>1 have to come from LA County?</p> <p>2 A. You know, I leave those finer</p> <p>3 distinctions to the attorneys. In some</p> <p>4 cases, these voting companies actually just</p> <p>5 lease those systems to the county. And in</p> <p>6 other cases, the county actually owns them.</p> <p>7 So I am not aware of which</p> <p>8 configuration or which arrangement LA County</p> <p>9 is under. So I leave that to the attorneys.</p> <p>10 Q. Okay. But you didn't -- you</p> <p>11 yourself are not offering an opinion or</p> <p>12 commentary on whether -- who would be able to</p> <p>13 provide that machine, fair?</p> <p>14 A. Fair.</p> <p>15 (Reporter clarification.)</p> <p>16 THE WITNESS: "Fair." In other</p> <p>17 words, I agreed with Mr. Frey.</p> <p>18 BY MR. FREY:</p> <p>19 Q. So let's turn to page 16 of</p> <p>20 your declaration, then. You see in</p> <p>21 paragraph 22, you state:</p> <p>22 "Given the totality of the lack</p> <p>23 of practical, effective cyber security</p> <p>24 protections on all of the election</p> <p>25 systems that I have examined, coupled</p>

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<p style="text-align: right;">Page 41</p> <p>1 with the lack of effective access</p> <p>2 controls to systems, it is a near</p> <p>3 certainty that the VSAP systems would</p> <p>4 be vulnerable to unauthorized access</p> <p>5 and vote manipulation through</p> <p>6 technical processes."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And is that the opinion you</p> <p>10 intend to offer in this case?</p> <p>11 A. Yes.</p> <p>12 Q. And again, so the opinion is</p> <p>13 that the voting systems would have technical</p> <p>14 vulnerabilities, right?</p> <p>15 A. The systems, as evaluated under</p> <p>16 the source code review, and based on the</p> <p>17 contents of the manuals, would have</p> <p>18 vulnerabilities that could allow remote</p> <p>19 access and manipulation of the databases on</p> <p>20 those systems.</p> <p>21 Q. Okay. And just to be clear,</p> <p>22 you're not opining that any actual vote</p> <p>23 manipulation occurred, are you?</p> <p>24 A. No, because I have not been</p> <p>25 able to examine a system that was actually</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. Okay. And so without looking</p> <p>2 at that -- at the machine, you can't say one</p> <p>3 way or the other, A, whether actual</p> <p>4 manipulation occurred, right?</p> <p>5 A. Well --</p> <p>6 Q. Is that fair?</p> <p>7 A. -- I cannot definitively prove</p> <p>8 that actual manipulation occurred during the</p> <p>9 election without the examination of one of</p> <p>10 the systems that was used in the election.</p> <p>11 Q. And are you also indicating</p> <p>12 here in this last sentence that you --</p> <p>13 without examining one of the machines, you</p> <p>14 cannot say whether it would be vulnerable to</p> <p>15 unauthorized access?</p> <p>16 A. No, I'm not saying that.</p> <p>17 Because based on my review of the -- of the</p> <p>18 supporting documents, I can tell you that it</p> <p>19 is vulnerable to remote access.</p> <p>20 Either through API, buffer</p> <p>21 overflows, memory injects, it certainly is</p> <p>22 susceptible to those remote access</p> <p>23 vulnerabilities.</p> <p>24 Q. And that's your opinion based</p> <p>25 on the information you reviewed, right?</p>
<p style="text-align: right;">Page 42</p> <p>1 used in the course of that election.</p> <p>2 Q. And you also state after that</p> <p>3 first opinion down at the bottom, you state:</p> <p>4 "I understand that Smartmatic</p> <p>5 has recently acknowledged that it has</p> <p>6 an exemplar BMD machine that it has</p> <p>7 not yet provided to defendant's</p> <p>8 counsel."</p> <p>9 Do you see that?</p> <p>10 A. I do.</p> <p>11 Q. And you go on to say:</p> <p>12 "Once I receive this machine, I</p> <p>13 will able to supplement my report. I</p> <p>14 would need to examine the VSAP system</p> <p>15 to definitively prove that this</p> <p>16 finding is directly applicable to the</p> <p>17 Los Angeles County voting system,"</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. So are you saying there that --</p> <p>21 when you refer to, "this finding," is that</p> <p>22 the finding that the systems would be</p> <p>23 vulnerable to unauthorized access?</p> <p>24 A. Yes, and the manipulation of</p> <p>25 the vote.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. That's correct.</p> <p>2 Q. We'll talk more about that</p> <p>3 today. I'm just trying to understand what</p> <p>4 your opinions are so that we can discuss</p> <p>5 them.</p> <p>6 A. Sure.</p> <p>7 Q. And since the time that you</p> <p>8 completed your declaration, I believe you</p> <p>9 indicated that you have not done any further</p> <p>10 work on this case, right?</p> <p>11 A. That's correct.</p> <p>12 Q. So is it fair to say that you</p> <p>13 haven't learned any more information since</p> <p>14 submitting this declaration that would allow</p> <p>15 you to add to your opinions?</p> <p>16 A. Well, I have read reports of</p> <p>17 the infiltration of the voter data from LA</p> <p>18 County that resided on servers based in</p> <p>19 China, due to an exploitation of some type</p> <p>20 from the Konnech system which I believe LA</p> <p>21 County utilizes.</p> <p>22 Q. And do you intend to offer any</p> <p>23 opinions in this case regarding these reports</p> <p>24 that you've read regarding exfiltration of</p> <p>25 voter data?</p>

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<p style="text-align: right;">Page 45</p> <p>1 A. I have not been asked to offer 2 any opinions on that particular subject at 3 this time. 4 Q. And were you aware -- let me 5 step back a second. 6 Did you review the expert 7 report of Dr. Allen Sherman that was 8 submitted in this litigation on behalf of 9 Smartmatic? 10 A. I did. 11 Q. Did you understand that you had 12 the opportunity to submit a rebuttal to his 13 report? 14 A. I was not asked to submit a 15 rebuttal to his report. If I were to do so, 16 I would simply state that Doctor -- Dr. 17 Shepard, I believe it was? 18 Q. Sherman. 19 A. Sherman. Dr. Sherman is under 20 the same constraints that I am, and he in 21 fact acknowledges that as a footnote in his 22 report, that he did not actually examine a 23 system that was utilized in the course of the 24 election. 25 Q. Okay. So is that your critique</p>	<p style="text-align: right;">Page 47</p> <p>1 Dr. Sherman's report in this litigation? 2 A. Well, I didn't come prepared to 3 really critique his report. I'm sure I have 4 other comments. If I am asked to do that, I 5 will be glad to provide that. 6 Q. But you haven't been asked to 7 do that today, right? 8 A. No. 9 Q. Have you reviewed the report of 10 Ms. Tammy Patrick that was submitted on 11 behalf of Smartmatic in this litigation? 12 A. I have not. 13 MR. FREY: So I think I'm at a 14 change of topics here. It's been 15 about an hour, so maybe let's go off 16 the record for five minutes and take a 17 quick break. 18 THE WITNESS: Okay. Thank you. 19 THE VIDEOGRAPHER: We are going 20 off the record at 10:30 a.m. 21 (Break taken.) 22 THE VIDEOGRAPHER: We are back 23 on the record at 10:37 a.m. 24 BY MR. FREY: 25 Q. Mr. Cotton, we're back on the</p>
<p style="text-align: right;">Page 46</p> <p>1 of Dr. Sherman? Or just your response to him 2 is that he was not actually able to review a 3 system utilized in the course of the 4 election? 5 A. I would say that it invalidates 6 a good deal of what he was saying. You know, 7 as part of what his report stated, he stated 8 those were not connected to the Internet. 9 You know, that flies directly 10 in the face of the network diagrams and the 11 documentation inside of the user manuals for 12 the LA County voting system, in that they 13 have data that specifically resides inside of 14 the AWS cloud. 15 So, therefore, it has to be 16 connected to the Internet in some form or 17 fashion to access that data that resides in 18 the AWS cloud. 19 The issues about 20 vulnerabilities, he's constrained by the fact 21 that he saw an exemplar system in Florida, 22 but he did not actually see a device that was 23 owned, operated or leased by LA County as 24 part of his examination. 25 Q. Any other critique you have of</p>	<p style="text-align: right;">Page 48</p> <p>1 record. And right now, I'd like to turn to 2 kind of your background and education 3 experience. 4 If you could flip with me to 5 page 17 of your declaration, which I believe 6 is where your CV begins. 7 A. Okay, one second. Okay. I'm 8 there. 9 Q. Okay. Is this a copy of your 10 CV? 11 A. It's a copy of the CV, I 12 believe as it existed at that time, yeah. 13 Q. And this -- have you updated 14 your CV, I guess, since this time of 15 September 2023? 16 A. I have. 17 Q. What have you added to your CV 18 over the past year? 19 A. So, just let me see where I'm 20 at here. 21 So I've added specific 22 testimony experience and things of that 23 nature. 24 Q. But have you received any 25 additional degrees in the past year?</p>

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<p style="text-align: right;">Page 85</p> <p>1 A. No.</p> <p>2 Q. So you were examining those</p> <p>3 voting systems related to other litigation in</p> <p>4 which you were retained as an expert,</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Did you rely upon your forensic</p> <p>8 review of these voting systems in rendering</p> <p>9 your opinions in this litigation?</p> <p>10 A. As a corpus of knowledge, I</p> <p>11 relied on that information that I obtained</p> <p>12 through those examinations for paragraphs 20</p> <p>13 and 21, which is the general cyber security</p> <p>14 posture for voting systems.</p> <p>15 Q. And do you -- let's go through</p> <p>16 them one at a time.</p> <p>17 So the first one is the voting</p> <p>18 system in Maricopa County Arizona. What</p> <p>19 company manufactured the voting system</p> <p>20 information you reviewed from Maricopa</p> <p>21 County?</p> <p>22 A. Dominion.</p> <p>23 Q. And what type of election</p> <p>24 technology system did you forensically</p> <p>25 examine?</p>	<p style="text-align: right;">Page 87</p> <p>1 all the digital media, and then used an FTK</p> <p>2 imageer to create a forensics image of each</p> <p>3 of those components.</p> <p>4 Q. Did you yourself --</p> <p>5 (Cross talk.)</p> <p>6 A. I've got a UPS device that is</p> <p>7 beeping and it's about to go off. So I need</p> <p>8 to reset something real quick.</p> <p>9 Q. Sure, no problem.</p> <p>10 MR. FREY: We can go off the</p> <p>11 record.</p> <p>12 THE VIDEOGRAPHER: We are going</p> <p>13 off the record at 11:30 a.m.</p> <p>14 (Break taken.)</p> <p>15 THE VIDEOGRAPHER: We are back</p> <p>16 on the record at 11:33 a.m.</p> <p>17 BY MR. FREY:</p> <p>18 Q. Okay. Mr. Cotton, we are back</p> <p>19 on the record. And my question was:</p> <p>20 Based on your prior answer that</p> <p>21 you followed standard digital imaging</p> <p>22 processes, et cetera, you -- it sounds like</p> <p>23 you yourself imaged the voting system</p> <p>24 components for Maricopa County, Arizona; is</p> <p>25 that true?</p>
<p style="text-align: right;">Page 86</p> <p>1 A. I examined all aspects of the</p> <p>2 digital computing devices, which included the</p> <p>3 Election Management Server, the EMS; the EMS</p> <p>4 clients; the adjudication work stations; the</p> <p>5 ICCs, which are the scanning controllers for</p> <p>6 the canon scanners.</p> <p>7 They also had four HiPro</p> <p>8 scanners, which were high volume scanning</p> <p>9 devices. Those were included as part of that</p> <p>10 examination.</p> <p>11 Q. Did you examine any ballot</p> <p>12 marking devices?</p> <p>13 A. They did not provide the ballot</p> <p>14 marking devices as part of that subpoena.</p> <p>15 But I did examine tabulators and the</p> <p>16 tabulator data cards.</p> <p>17 Q. So tabulators, tabulator data</p> <p>18 cards, EMS, scanners.</p> <p>19 But no BMDs, right?</p> <p>20 A. Correct.</p> <p>21 Q. How did you obtain the forensic</p> <p>22 images of these components of the voting</p> <p>23 system in Maricopa County Arizona?</p> <p>24 A. So I followed standard digital</p> <p>25 imaging processes, utilized a right block for</p>	<p style="text-align: right;">Page 88</p> <p>1 A. You mean some of them. We had</p> <p>2 a team of ten people that were performing the</p> <p>3 imaging. I personally conducted the training</p> <p>4 of all people to make sure they met the</p> <p>5 standards. They were part of my company.</p> <p>6 And we had some independent contractors</p> <p>7 contacted as well for this.</p> <p>8 So we baselined everybody, did</p> <p>9 essentially a mini-validation that they were</p> <p>10 following proper procedures, and then we</p> <p>11 imaged approximately 140 terabytes of data as</p> <p>12 part of that engagement.</p> <p>13 Q. And I don't need the exact</p> <p>14 date, but do you recall the time period in</p> <p>15 which you performed this imaging?</p> <p>16 A. It would have been from the</p> <p>17 middle of May for the next two weeks.</p> <p>18 Q. May 2021?</p> <p>19 A. Yeah.</p> <p>20 Q. So it wasn't imaged at the time</p> <p>21 of the election, correct?</p> <p>22 A. No. We were relying on the</p> <p>23 Arizona Senate to provide the devices under</p> <p>24 subpoena. And so it took -- the subpoena was</p> <p>25 issued in December of 2020, and then there</p>

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<p style="text-align: right;">Page 89</p> <p>1 were some court proceedings that delayed the 2 handoff of that equipment to -- I'm sorry, 3 April of 2021. 4 It would have been middle of 5 April 2021 to the first part of May. Two 6 weeks, roughly, is where it took us. 7 Q. And do you know whether at the 8 time you were able to image the devices in 9 the systems, whether they would reflect the 10 same setup and the same kind of operating 11 capacity abilities that they would have had 12 on election day in November of 2020? 13 A. Well, since there was a -- 14 well, let me preface this. 15 We assumed that they would, and 16 that assumption was based on the fact that 17 notice was provided to Maricopa County, that 18 there was pending litigation by the Senate. 19 And so, therefore, we assumed that there 20 would be a preservation of that data in 21 accordance with law. 22 Q. And after you imaged and 23 reviewed this information, did you appear as 24 an expert witness to testify regarding your 25 review?</p>	<p style="text-align: right;">Page 91</p> <p>1 Court in that case found that Rule 11 2 sanctions were appropriate against Ms. Lake's 3 attorneys? 4 A. You'd have to ask the attorneys 5 on that. I didn't pay a lot of attention to 6 that. 7 Q. And isn't it also true that 8 there was a special master appointed by the 9 Arizona State Senate in that litigation? 10 A. There was. 11 Q. And isn't it true that the 12 special master in that case disagreed with 13 your findings related to what the 14 forensically-imaged information showed? 15 A. That is true, they disagreed 16 with our findings. However, their report was 17 fatally flawed. 18 Q. Is that your opinion? 19 A. Well, I think it would be any 20 honest examination of the facts opinion. 21 One, their scope was strictly limited to the 22 network aspects of the systems. 23 That was the reason they 24 appointed the special master, is they did not 25 want to produce the routers and network data</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Yes. 2 Q. And was that -- is that the 3 Kari Lake litigation? 4 A. Yes. So there was also two 5 presentations to the public in the Arizona 6 Senate previous to that litigation. I 7 believe that would have been July and 8 possibly the first part of September of 2021. 9 Q. And you were retained by 10 attorneys representing Ms. Lake, correct? 11 A. I was. 12 Q. And isn't it true that that 13 litigation was dismissed by the Court? 14 A. I believe it was, but then it 15 was subsequently appealed. I believe they're 16 still -- they are still in legal proceedings 17 over that matter, as I understand it. 18 Q. And is that the case we talked 19 about earlier, wherein sanctions were awarded 20 against the attorneys for the client you were 21 retained by? 22 A. Well, I can't speak as to 23 sanctions. However, there was a complaint at 24 the bar. 25 Q. Are you aware of whether the</p>	<p style="text-align: right;">Page 92</p> <p>1 to the auditors. So they appointed a special 2 master. 3 The -- in that report, they 4 stated that Maricopa County had informed them 5 that there were no managed switches that were 6 part of the voting system. And because of 7 that statement and a brief inspection of a 8 computer routing rack that was created after 9 the election, the special master said they 10 could not have been connected to the -- there 11 was no -- they stated that there was no 12 managed switch, so therefore, there was no 13 data, and that it was an Air Gapped system. 14 The problem with that is that 15 Pro V&V had been engaged in March of 2021 by 16 Maricopa County. And as part of their 17 examination for their audit, they listed a 18 managed switch. So it's clear that the 19 special master report did not have access to 20 the equipment and the configuration that 21 existed at the time of election, and at the 22 time of the Pro V&V audit. 23 Q. The court found the special 24 master's findings to be dispositive, right? 25 A. The Court certainly considered</p>

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<p style="text-align: right;">Page 97</p> <p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. And the Court says that the</p> <p>4 special master found, quote, "No evidence</p> <p>5 that the routers, manage switches, or</p> <p>6 electronic devices in Maricopa County's</p> <p>7 Ballot Tabulations Center connected to the</p> <p>8 public Internet," right?</p> <p>9 A. I see that.</p> <p>10 Q. And is this consistent with the</p> <p>11 special master's testimony?</p> <p>12 A. That is. However, what I would</p> <p>13 like to point out here is that the special</p> <p>14 master's examination of the current state of</p> <p>15 the Maricopa County network was conducted</p> <p>16 almost two and a half months after we imaged</p> <p>17 the devices.</p> <p>18 At no time did they request or</p> <p>19 did they examine the forensics images that we</p> <p>20 created that was the basis of my testimony.</p> <p>21 So in other words, they wrote a</p> <p>22 report without looking at the evidence. They</p> <p>23 wrote a report in which not all of the</p> <p>24 evidence, as it existed at the time of the</p> <p>25 election, existed.</p>	<p style="text-align: right;">Page 99</p> <p>1 "Although the plaintiffs'</p> <p>2 claims that Maricopa County's systems</p> <p>3 can be or have been connected to the</p> <p>4 Internet are in direct contradiction</p> <p>5 to the County Defendant's evidence and</p> <p>6 the special master's findings, the</p> <p>7 Court will treat them as unpersuasive</p> <p>8 arguments rather than as false</p> <p>9 assertions of fact, allowing</p> <p>10 plaintiffs the benefit of the doubt."</p> <p>11 Do you see that?</p> <p>12 A. I think the keyword there is</p> <p>13 they allowed the plaintiffs the benefit of</p> <p>14 the doubt. If you will review my report to</p> <p>15 the Senate, I itemized specific instances in</p> <p>16 which multiple connections were made external</p> <p>17 to the Air Gap network by the EMS.</p> <p>18 Q. And you maintain control or</p> <p>19 possession of the information that you</p> <p>20 forensically reviewed in this case?</p> <p>21 A. So I returned to forensics</p> <p>22 images to the Arizona State Senate.</p> <p>23 Q. Did you rely upon the forensic</p> <p>24 images from the Maricopa County voting</p> <p>25 systems in rendering your opinions in this</p>
<p style="text-align: right;">Page 98</p> <p>1 And they relied almost</p> <p>2 exclusively on the Maricopa County officials'</p> <p>3 assertion that it was an Air Gap network.</p> <p>4 So this was his decision, but</p> <p>5 quite frankly, I don't understand how you can</p> <p>6 make this decision when they didn't look at</p> <p>7 the evidence that we preserved. And the</p> <p>8 Senate had a copy of those images.</p> <p>9 And that did not include all</p> <p>10 the equipment that the Pro V&V audit report</p> <p>11 validated was present at the time of the</p> <p>12 election.</p> <p>13 You know, I think we've all</p> <p>14 been in cases where we believe the judge got</p> <p>15 it wrong. And in this case, he definitely</p> <p>16 did.</p> <p>17 Q. As the Court then goes on to</p> <p>18 state at the bottom of that page, it says:</p> <p>19 "The special master's findings</p> <p>20 are consistent with what the County</p> <p>21 has long maintained and what previous</p> <p>22 audits have likewise concluded."</p> <p>23 Do you see that?</p> <p>24 A. I do.</p> <p>25 Q. And then the Court says:</p>	<p style="text-align: right;">Page 100</p> <p>1 case?</p> <p>2 A. From a corpus of knowledge as</p> <p>3 it pertained to cyber security, yes, in</p> <p>4 paragraphs 20 and 21.</p> <p>5 There was no dispute that they</p> <p>6 did not patch the systems, they had not</p> <p>7 updated the antivirus, they allowed remote</p> <p>8 access to the EMS, they had used the same</p> <p>9 password for all user accounts on the system.</p> <p>10 There's no dispute to that.</p> <p>11 Q. And I'm just trying to</p> <p>12 understand that -- the extent to which you</p> <p>13 relied upon that for rendering your opinions</p> <p>14 in this litigation.</p> <p>15 And that's in paragraphs 20 and</p> <p>16 21, you said, correct?</p> <p>17 A. Well, specifically to the Air</p> <p>18 Gap network, I relied on my personal</p> <p>19 knowledge and the ability to easily bypass</p> <p>20 Air Gap networks through various techniques.</p> <p>21 I did not rely on this particular finding by</p> <p>22 the judge as part of my report.</p> <p>23 Q. Okay. I want to talk about the</p> <p>24 next system that you forensically reviewed,</p> <p>25 and that's Antrim County, Michigan, correct?</p>

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<p style="text-align: right;">Page 101</p> <p>1 A. Correct.</p> <p>2 Q. And what company manufactured</p> <p>3 the voting system information you reviewed</p> <p>4 from Antrim County?</p> <p>5 A. Dominion.</p> <p>6 Q. And was that the Dominion</p> <p>7 5.5(a), did you testify earlier?</p> <p>8 A. B.</p> <p>9 Q. 5.5(b), okay.</p> <p>10 A. 5.5(b) --</p> <p>11 Q. I'm sorry?</p> <p>12 A. 5.5(a) is Georgia.</p> <p>13 Q. And what components of the</p> <p>14 voting system did you forensically review in</p> <p>15 Antrim County?</p> <p>16 A. So with Antrim County, I had</p> <p>17 access to previously imaged -- to a</p> <p>18 previously-imaged forensics image of the EMS</p> <p>19 server, as well as the poll books and I</p> <p>20 believe an ICC.</p> <p>21 Q. So no BMD, correct?</p> <p>22 A. And a BMD, yes.</p> <p>23 Q. There was a BMD?</p> <p>24 A. Yes.</p> <p>25 Q. And you don't recall one way or</p>	<p style="text-align: right;">Page 103</p> <p>1 write block.</p> <p>2 Q. Are you confident that it</p> <p>3 was --</p> <p>4 A. And it was --</p> <p>5 (Cross talk.)</p> <p>6 (Reporter clarification.)</p> <p>7 THE WITNESS: It was in the</p> <p>8 N-case format.</p> <p>9 BY MR. FREY:</p> <p>10 Q. Are you confident that it was</p> <p>11 collected in the manner that would</p> <p>12 demonstrate how it would have performed on</p> <p>13 election day?</p> <p>14 A. I saw no indications that</p> <p>15 anything was modified on it. And within the</p> <p>16 N-case forensics image format, it has a</p> <p>17 self-validation/verification function. And</p> <p>18 the images -- the image is verified.</p> <p>19 Q. And did you appear as an expert</p> <p>20 witness related to your review of the</p> <p>21 information obtained from Antrim County?</p> <p>22 A. Specific to Antrim County, I</p> <p>23 submitted an affidavit, but it did not reach</p> <p>24 court so I did not testify.</p> <p>25 Q. That litigation was dismissed</p>
<p style="text-align: right;">Page 102</p> <p>1 the other whether BMDs were used in Antrim</p> <p>2 County in the 2020 election?</p> <p>3 A. I don't recall if this was one</p> <p>4 that was actually used or one that they had</p> <p>5 imaged.</p> <p>6 I actually had imaged that one,</p> <p>7 so I don't know if that one was actually used</p> <p>8 in the election or not, so...</p> <p>9 Q. And it sounds like -- you said</p> <p>10 you imaged one thing and then they had imaged</p> <p>11 other things.</p> <p>12 So who did the -- who obtained</p> <p>13 the information that you reviewed --</p> <p>14 A. I'd have to look at the custody</p> <p>15 documents for the exact person, but I believe</p> <p>16 it was a member of an organization called</p> <p>17 ASOC.</p> <p>18 Q. Is that Colonel Waldron's</p> <p>19 organization?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. Do you know the manner in which</p> <p>22 they collected information?</p> <p>23 A. Based on the forensic images</p> <p>24 that I got, it appeared to be created with</p> <p>25 FTK Imager in conjunction with the use of a</p>	<p style="text-align: right;">Page 104</p> <p>1 by the court, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Do you retain control or</p> <p>4 possession of the forensic images from Antrim</p> <p>5 County?</p> <p>6 A. I returned those to the</p> <p>7 attorney.</p> <p>8 Q. Did you review the forensic</p> <p>9 images from Antrim County in the course of</p> <p>10 drafting your declaration in this case?</p> <p>11 A. I reviewed the report at some</p> <p>12 point prior to writing this, but once again,</p> <p>13 that formed the -- kind of the corpus of</p> <p>14 knowledge for paragraphs 20 and 21.</p> <p>15 Q. And in paragraphs 20 and 21,</p> <p>16 you don't cite to any specific, you know,</p> <p>17 findings or Antrim County specifically in</p> <p>18 there, correct?</p> <p>19 A. No, but what I did find was</p> <p>20 consistent among all of the Dominion systems,</p> <p>21 was an -- I would call it a complete and</p> <p>22 utter lack of cyber security practices.</p> <p>23 The systems weren't patched,</p> <p>24 the antivirus wasn't updated, there was no</p> <p>25 mechanism to validate that only certified</p>

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<p style="text-align: right;">Page 105</p> <p>1 processes were being run, that only</p> <p>2 authorized MAC addresses were communicating.</p> <p>3 The user passwords had never</p> <p>4 been changed since the date of the</p> <p>5 installation of the software, and there was</p> <p>6 repeated usage of the same password within</p> <p>7 each jurisdiction for all user accounts. And</p> <p>8 that had been across all Dominion.</p> <p>9 Q. And we just -- we don't -- to</p> <p>10 your knowledge, defendants have not produced</p> <p>11 any of the information you're relying on here</p> <p>12 to plaintiffs in this case, right?</p> <p>13 A. No one has asked for it.</p> <p>14 Q. And if the request were made,</p> <p>15 would you be able to provide the images you</p> <p>16 reviewed from Antrim County?</p> <p>17 A. I would, but I would assume</p> <p>18 that that would take a court order, because</p> <p>19 one company is looking at another company's</p> <p>20 proprietary data. But, yes, we would produce</p> <p>21 that.</p> <p>22 Q. Moving on to Mesa County,</p> <p>23 Colorado.</p> <p>24 What voting system information</p> <p>25 did you review from Mesa County, Colorado?</p>	<p style="text-align: right;">Page 107</p> <p>1 exactly what she was charged with.</p> <p>2 BY MR. FREY:</p> <p>3 Q. And you said you got the image</p> <p>4 that you reviewed from her attorneys; is that</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. And was that in connection with</p> <p>8 the defense of her criminal case?</p> <p>9 A. That was my understanding, yes.</p> <p>10 Q. And what work did you do with</p> <p>11 that image?</p> <p>12 A. I was asked to be a</p> <p>13 non-testifying expert and review the findings</p> <p>14 of another team's report.</p> <p>15 Q. Do you maintain control or</p> <p>16 possession of the image of the Dominion EMS</p> <p>17 from Mesa County, Colorado?</p> <p>18 A. I do not.</p> <p>19 Q. Are you relying upon your</p> <p>20 review of the Dominion EMS from Mesa County,</p> <p>21 Colorado in rendering your opinions in this</p> <p>22 case?</p> <p>23 A. Only to the effect of the cyber</p> <p>24 security implications for the election</p> <p>25 systems as a whole.</p>
<p style="text-align: right;">Page 106</p> <p>1 A. I reviewed an image of the</p> <p>2 Dominion EMS.</p> <p>3 Q. So not a ballot-marking device,</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. And how did you obtain the</p> <p>7 information or the image of the Dominion EMS</p> <p>8 from Mesa County, Colorado?</p> <p>9 A. I was provided that by the</p> <p>10 legal team that was defending -- I'm sorry, I</p> <p>11 don't remember her name right now -- but the</p> <p>12 County clerk and the election official for</p> <p>13 Mesa County.</p> <p>14 Q. Is it Tina Peters?</p> <p>15 A. It is. Thank you.</p> <p>16 Q. Are you aware, then, that Ms.</p> <p>17 Peters was indicted for copying this election</p> <p>18 software from Mesa County Colorado without</p> <p>19 authorization?</p> <p>20 MR. KACHOUROFF: Objection.</p> <p>21 (Inaudible) hypothetical.</p> <p>22 Go ahead, you can answer the</p> <p>23 question.</p> <p>24 THE WITNESS: I knew she had</p> <p>25 legal problems. I wasn't aware of</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Okay. What voting system</p> <p>2 information did you review from Coffee</p> <p>3 County, Georgia?</p> <p>4 A. I was retained by Misty</p> <p>5 Hampton's attorney to examine the EMS and one</p> <p>6 ICC notebook as part of her defense for Misty</p> <p>7 Hampton.</p> <p>8 Q. And was that -- excuse me.</p> <p>9 (Discussion off the record.)</p> <p>10 BY MR. FREY:</p> <p>11 Q. So you reviewed the EMS and an</p> <p>12 ICC notebook.</p> <p>13 Was that a Dominion system?</p> <p>14 A. That was, yes.</p> <p>15 Q. And again, that's -- you did</p> <p>16 not review an image of a ballot-marking</p> <p>17 device, correct?</p> <p>18 A. No.</p> <p>19 Q. And do you know how the image</p> <p>20 that you reviewed of the EMS and ICC notebook</p> <p>21 was obtained?</p> <p>22 A. Yes. I was provided that by --</p> <p>23 or provided access to it by Stephanie</p> <p>24 Lambert, who was the attorney for Misty</p> <p>25 Hampton.</p>

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<p style="text-align: right;">Page 109</p> <p>1 Q. Okay. And was Ms. Lambert 2 representing Ms. Hampton against the charges 3 that she had illegally obtained this 4 information? 5 A. I don't know exactly what Misty 6 Hampton's charges were, but there was the 7 possibility that she would be charged with 8 something. 9 Q. And what was the purpose of 10 your review of the information? 11 A. I think that gets a little bit 12 into the attorney-client work product piece 13 there, and they have not released that -- 14 they have not given me authorization to 15 discuss that. 16 But I will tell you that for 17 the purposes of this declaration, I relied on 18 the general cyber security status indicative 19 on the EMS system. 20 So passwords, remote access, 21 system patches, failure to update the 22 antivirus, and Internet access. 23 Q. And do you maintain control or 24 possession of the this EMS ICC notebook 25 images?</p>	<p style="text-align: right;">Page 111</p> <p>1 iPad. And I visually inspected that, I did 2 not image that device. 3 My purpose there was to 4 validate that the local election clerk had 5 that particular tablet secured behind a lock 6 and key and that it was functional. 7 I subsequently was provided 8 data specific to the databases and the 9 compilation of the votes from the EPB thumb 10 drive for analysis. 11 Q. "EPB," what does EPB stand for? 12 A. Or, I'm sorry -- EDP, Election 13 Database. 14 Q. And how did you obtain -- or 15 who obtained the EDP thumb drive for 16 analysis? 17 A. That would have been the 18 attorney, Ms. Lambert. 19 Q. And do you know how she 20 collected it? 21 A. I do not. 22 Q. Are you aware that also 23 criminal charges were considered against the 24 Adams County clerk related to her disclosure 25 of this voting system information?</p>
<p style="text-align: right;">Page 110</p> <p>1 A. That's an ongoing case, so yes, 2 I still have a copy of those forensic images. 3 Q. And you understand that if it's 4 an ongoing case, that it's not been made 5 available to Smartmatic in this action, 6 correct? 7 A. I certainly have not provided 8 it to you. I don't know if Ms. Lambert has 9 or not. 10 Q. Again, I believe you said 11 you're relying on it to the extent of the 12 opinions you render in paragraphs 20 and 21? 13 A. Correct. 14 Q. And then the last one here, 15 Adams County, Michigan. 16 What voting system information 17 did you review from Adams County, Michigan? 18 A. So that was the Hart 19 Intercivic. 20 (Reporter clarification. 21 BY MR. FREY: 22 Q. What type of election 23 technology -- what were the components that 24 you reviewed from Adams County, Michigan? 25 A. So I looked at the precinct</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I am. 2 Q. And that's the data you 3 obtained? 4 A. Yes. I would like to also 5 clarify that in my engagement letter, I have 6 a paragraph 10 that states -- it's an 7 indemnity clause in which the attorneys I 8 engage represent that all data that they 9 present to me for examination is legally and 10 lawfully obtained, and that they have a right 11 to authorize me to examine it. 12 Q. So you're relying on the 13 attorneys there, correct? 14 A. Correct. 15 Q. And do you still maintain 16 control or possession of the EDP from Adams 17 County? 18 A. I do. It's an ongoing case. 19 Q. Did you rely upon this 20 information from Adams County in rendering 21 your opinions in this case? 22 A. No. 23 Q. Okay. 24 MR. FREY: Let's take another 25 break -- I'm at a good point -- and</p>

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<p style="text-align: right;">Page 113</p> <p>1 use five minutes.</p> <p>2 THE VIDEOGRAPHER: Going off</p> <p>3 the record at 12:06 p.m.</p> <p>4 (Break taken.)</p> <p>5 THE VIDEOGRAPHER: We are back</p> <p>6 on the record at 12:41 p.m.</p> <p>7 BY MR. FREY:</p> <p>8 Q. All right. Mr. Cotton, we're</p> <p>9 back on the record. I want to briefly talk</p> <p>10 about the scope of your opinion in this case</p> <p>11 again, and to confirm that -- are the</p> <p>12 opinions you set forth here in your</p> <p>13 declaration the opinions you intend to offer</p> <p>14 at trial in this matter?</p> <p>15 A. Yes.</p> <p>16 Q. Are you planning to offer any</p> <p>17 other opinions not identified in your</p> <p>18 declaration?</p> <p>19 A. I haven't been asked any other</p> <p>20 opinions at this point. If I was asked, I</p> <p>21 would write an addendum, should more</p> <p>22 information become available.</p> <p>23 Q. Do you intend to perform any</p> <p>24 additional analysis?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. Have you watched Mr. Lindell's</p> <p>2 documentary, Absolutely 9-0?</p> <p>3 A. I have not.</p> <p>4 Q. And have you watched Mr.</p> <p>5 Lindell's documentary, Scientific Proof?</p> <p>6 A. I have not.</p> <p>7 Q. You did attend Mr. Lindell's</p> <p>8 cyber symposium in August of 2021, correct?</p> <p>9 A. I went there. The data that I</p> <p>10 had been promised would be provided to me was</p> <p>11 not provided, and so I did not stick around.</p> <p>12 I was not actually part of the symposium.</p> <p>13 Q. And so is it your opinion,</p> <p>14 then, that at least to your review or what</p> <p>15 you have seen, the alleged PCAP data</p> <p>16 demonstrating the November 2020 U.S. election</p> <p>17 was manipulated is not evidence that the</p> <p>18 election was manipulated?</p> <p>19 A. All I can respond to is the</p> <p>20 data that was provided to me. Whether or not</p> <p>21 or that was the entire body of data that was</p> <p>22 provided to the other 15 or 20 experts, I</p> <p>23 cannot opine to.</p> <p>24 But I can tell you that the</p> <p>25 data that was provided to me was not</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Do you currently intend to</p> <p>2 change any of the opinions set forth in your</p> <p>3 declaration?</p> <p>4 A. No.</p> <p>5 Q. Are you offering any opinions</p> <p>6 in this case on the truth of the statements</p> <p>7 Mr. Lindell published regarding Smartmatic's</p> <p>8 alleged role in the validity of the 2020 U.S.</p> <p>9 election?</p> <p>10 A. No.</p> <p>11 Q. Are you aware of the statements</p> <p>12 Mr. Lindell published regarding Smartmatic</p> <p>13 and its alleged role in manipulating the 2020</p> <p>14 U.S. election?</p> <p>15 A. I am not aware of specific</p> <p>16 statements by Mr. Lindell.</p> <p>17 Q. Have you reviewed Smartmatic's</p> <p>18 first amended complaint in this litigation?</p> <p>19 A. I don't believe I have.</p> <p>20 Q. Have you watched Mr. Lindell's</p> <p>21 documentary, Absolute Proof?</p> <p>22 A. I have not.</p> <p>23 Q. Have you watched Mr. Lindell's</p> <p>24 documentary, Absolute Interference?</p> <p>25 A. I have not.</p>	<p style="text-align: right;">Page 116</p> <p>1 sufficient for me to make an opinion on that.</p> <p>2 Q. And you're not intending to</p> <p>3 offer any affirmative opinions in this case</p> <p>4 regarding the validity of the alleged PCAP</p> <p>5 data, right?</p> <p>6 A. That is not within the scope of</p> <p>7 my declaration.</p> <p>8 Q. Are you aware of statements</p> <p>9 published by Mr. Lindell and Dr. Frank</p> <p>10 regarding a 6th degree polynomial algorithm</p> <p>11 that was used to manipulate the November 2020</p> <p>12 U.S. election?</p> <p>13 A. Only tangentially. I remember</p> <p>14 hearing something about it, and I don't even</p> <p>15 remember where I heard about it.</p> <p>16 But, you know, my area of</p> <p>17 expertise is computer forensics, cyber</p> <p>18 security. So I don't know much about that.</p> <p>19 Q. So you're not going to offer</p> <p>20 any opinions regarding that theory as an</p> <p>21 expert in this case, correct?</p> <p>22 A. No.</p> <p>23 Q. Are you aware of claims made by</p> <p>24 Mr. Lindell and others that cast vote records</p> <p>25 indicate that the election in LA County was</p>

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<p style="text-align: right;">Page 117</p> <p>1 manipulated by Smartmatic?</p> <p>2 A. I am not.</p> <p>3 Q. So is it fair to say that you</p> <p>4 will not be offering any opinions in this</p> <p>5 case regarding what cast vote records may</p> <p>6 indicate regarding the integrity of the 2020</p> <p>7 election in LA County?</p> <p>8 A. That is not currently within</p> <p>9 the scope of my engagement.</p> <p>10 Q. Are you familiar with the</p> <p>11 Election's Infrastructure Government</p> <p>12 Coordinating Council?</p> <p>13 A. Are you talking the DHS entity?</p> <p>14 Q. Yes.</p> <p>15 A. I am aware of it, yes.</p> <p>16 Q. Are you familiar with it at</p> <p>17 all?</p> <p>18 A. To a high-level degree, nothing</p> <p>19 in detail.</p> <p>20 Q. How about the Election</p> <p>21 Infrastructure Sector Coordinating Executive</p> <p>22 Committee?</p> <p>23 A. I'm aware that it exists. I am</p> <p>24 not a member of it.</p> <p>25 Q. Were you aware that on</p>	<p style="text-align: right;">Page 119</p> <p>1 incongruities with the forensics facts versus</p> <p>2 the statement that was released.</p> <p>3 Q. And the basis for that is the</p> <p>4 forensic work you did in Maricopa County,</p> <p>5 Arizona; is that right?</p> <p>6 A. Maricopa, Antrim, and Georgia.</p> <p>7 During the case of Antrim, there was clearly</p> <p>8 votes that were flipped. There's still some</p> <p>9 debate a bit about why that happened, but the</p> <p>10 clerk caught those. So we do know that that</p> <p>11 did occur, but that was corrected.</p> <p>12 So, you know, there are some</p> <p>13 inconsistencies with the absolute statement</p> <p>14 on that report that they released.</p> <p>15 Q. Are you intending to offer</p> <p>16 opinions in this case regarding the outcome</p> <p>17 of elections in Michigan, Arizona, or</p> <p>18 Georgia?</p> <p>19 A. That's not within the scope.</p> <p>20 And I will tell you that my testimony will be</p> <p>21 centered around forensics findings and</p> <p>22 forensics evidence on the systems that I have</p> <p>23 examined.</p> <p>24 Q. Are you aware of any evidence</p> <p>25 of actual voter manipulation or actual vote</p>
<p style="text-align: right;">Page 118</p> <p>1 November 12, 2020, these two -- that the</p> <p>2 EIGCC and the EISEC issued a report stating</p> <p>3 that the November 3rd election was the most</p> <p>4 secure in American history, and that there's</p> <p>5 no evidence of any voting system lost -- any</p> <p>6 voting system lost or deleted votes, changed</p> <p>7 votes, or was in any way compromised?</p> <p>8 A. I am aware they issued that</p> <p>9 report, yes.</p> <p>10 Q. Do you disagree with that</p> <p>11 statement?</p> <p>12 A. I do disagree, to the extent of</p> <p>13 my knowledge on the systems that I have</p> <p>14 examined.</p> <p>15 In the case of Arizona for</p> <p>16 example, there were several hundred thousand</p> <p>17 ballots deleted off of the EMS by the time</p> <p>18 that we received that. Some of those were</p> <p>19 actually during the election time period.</p> <p>20 So I would have to understand</p> <p>21 better the full scope and the basis for their</p> <p>22 statement before I could really opine on the</p> <p>23 validity of it.</p> <p>24 But I know from personal</p> <p>25 experience, there do appear to be some</p>	<p style="text-align: right;">Page 120</p> <p>1 manipulation occurring in LA County in the</p> <p>2 November 2020 U.S. election?</p> <p>3 A. I have not been able to examine</p> <p>4 the actual systems. So once again, from a</p> <p>5 forensics standpoint, I am not aware because</p> <p>6 I have not been able to examine the actual</p> <p>7 systems.</p> <p>8 Q. And I believe in preparing your</p> <p>9 declaration, you reviewed a number of</p> <p>10 documents related to the VSAP 2.1</p> <p>11 certification, right? Those are listed in</p> <p>12 paragraph 14 of your -- or 13 of your report?</p> <p>13 A. That is correct.</p> <p>14 Q. And aside from reading these</p> <p>15 documents and the version 3.0 certification</p> <p>16 documents, what else did you do to</p> <p>17 familiarize yourself with the LA County VSAP</p> <p>18 initiative?</p> <p>19 A. I obviously read the web page</p> <p>20 articles that they had. Anything related to</p> <p>21 VSAP, I reviewed those pages. And I reviewed</p> <p>22 the reports, I reviewed the source code</p> <p>23 report and those items as listed in my</p> <p>24 declaration.</p> <p>25 Q. What is your understanding of</p>

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<p style="text-align: right;">Page 121</p> <p>1 the components of the VSAP system used in 2 November 2020 that were manufactured or 3 designed by Smartmatic? 4 A. Well, I looked at it from -- 5 from a systematic hold perspective. And so, 6 you know, there's various components. 7 My understanding is that 8 Smartmatic has a component within all of 9 those related systems. My scope of this work 10 was not related specifically to Smartmatic, 11 it was to the VSAP system. 12 Q. So in -- I guess, in performing 13 your work, you didn't worry so much about 14 whether it was a Smartmatic manufactured 15 component versus a component manufactured by 16 someone else? 17 A. That's correct. 18 Q. Okay. In the course of your 19 analysis in this case, did you explicitly 20 analyze or consider the ballot marking 21 devices? 22 A. Only to the extent that there 23 were reports or evaluations based on those 24 ballot marking devices. 25 Q. What is your understanding of</p>	<p style="text-align: right;">Page 123</p> <p>1 A. I do not recall. That would be 2 in the user's manual. 3 Q. Do you know whether the ballot 4 marking devices used in LA County in 5 November 2020 tabulated votes? 6 A. I believe those votes were 7 transmitted to a central tallying facility. 8 I believe that was called BMG. 9 Q. Do you know whether the ballot 10 marking devices used in LA County in 11 November 2020 would store votes? 12 A. It would obviously store those 13 votes prior in some medium, either in memory 14 or on thumb drive or removable media, until 15 those votes were transmitted to the central 16 counting facility. 17 Q. Do you know whether the 18 ballot-marking devices used in LA County in 19 November 2020 generated a paper ballot? 20 A. I do not know. 21 Q. What is your understanding of 22 BMG system in LA County's VSAP initiative? 23 A. So the BMG is basically a 24 manager for all of the ballot-marking 25 devices, and also contains some capacity or</p>
<p style="text-align: right;">Page 122</p> <p>1 the functionality of a ballot-marking device? 2 A. Well, a ballot-marking device 3 is a computing device that contains 4 vendor-specific application software that a 5 user either disabled or, in some 6 jurisdictions -- like in Georgia, for 7 example -- they do this for all voters. 8 But through the interaction of 9 the user and the application, they were able 10 to indicate on a stored ballot what their 11 voting preferences are, and then that vote is 12 tallied and recorded as part of the voting 13 process. 14 In some cases, they will 15 present a screen after the user has selected 16 the votes and the voter will confirm on the 17 screen; or in some cases, they actually print 18 something out and the voter supposedly looks 19 at that, validates it. 20 And then once they commit, then 21 that vote is considered closed and is then 22 counted as part of the election process. 23 Q. Do you know in LA County, 24 whether the BMD printed out the ballot before 25 allowing the voter to cast their ballot?</p>	<p style="text-align: right;">Page 124</p> <p>1 the function for a centralized repository for 2 the different voting tabulations. 3 Q. When you say "a centralized 4 repository for the different voting 5 tabulations," could you explain what you mean 6 by that? 7 A. Well, the votes can be 8 transmitted to that BMG and then aggregated 9 into a total. 10 Q. What is the basis for your 11 understanding in that regard? 12 A. My review of the user's manual. 13 Q. It's your understanding there 14 that the BMG would take a record of an 15 electronic record of the vote from the 16 ballot-marking device? 17 A. It can. I haven't examined the 18 actual systems that were used in the 19 election, so I don't know what their 20 configuration was or how they functioned in 21 that particular election. 22 Q. If the BMG did not create an 23 electronic record of a vote, would that 24 impact your opinions at all? 25 A. No, because I'm approaching</p>

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<p style="text-align: right;">Page 125</p> <p>1 this from a cyber security perspective, can 2 you get remote access to an individual 3 component? 4 The ATSEC report evaluated all 5 of the different components, not just the 6 BMG. So it wouldn't change my opinions. 7 Q. In forming your opinions in 8 this case with respect to the ability to 9 remote -- to gain remote access, have you 10 formed opinions or do you have opinions 11 regarding what could or could not be done 12 with that remote access? 13 A. I have some opinions to that. 14 And obviously, as I get the opportunity to 15 examine these specific devices, I would form 16 more. 17 But based on the 18 vulnerabilities that are in the ATSEC report, 19 you have the ability to iterate the running 20 processes remotely. 21 You have the ability to inject 22 -- do memory injections on these devices. 23 You have the ability to perform buffer 24 overflows on these devices. 25 You have the ability to</p>	<p style="text-align: right;">Page 127</p> <p>1 communicating with those ports. 2 Q. So if a port was fingerprinted, 3 I suppose, what would someone do with that? 4 A. Just as one example, they run 5 SQLite databases. SQLite databases could 6 communicate on port 1443 and 1445. 7 If you fingerprint a port, one, 8 you validate that they are running SQL; and 9 two, you know exactly which ports they are so 10 that you can then craft buffer overflows that 11 you may be able to get command line access 12 back into the SQL server for that port. 13 That's just one example of 14 that. 15 Q. What do you mean by "a buffer 16 overflow"? 17 A. So a buffer overflow is a 18 specific type of vulnerability in which you 19 send a specific formed packet to that device, 20 and that -- the packet instructions will 21 exceed the expected buffer length for a given 22 technology. 23 So SQL, for example: It's 24 expecting a payload package with X-amount of 25 characters in it. If you -- for a buffer</p>
<p style="text-align: right;">Page 126</p> <p>1 manipulate vulnerabilities, such that you 2 could overwrite specific files within these 3 end points. 4 And you have the ability to 5 escalate your user privileges if you do have 6 access to the systems. 7 Q. I want to take those one at a 8 time. 9 So the first thing you said, I 10 believe, is the ability to iterate running 11 processes. 12 What do you mean by "iterate 13 running processes"? 14 A. Well, there's no protection on 15 the ports, from what I can tell, on the 16 vulnerability listings to prevent the 17 interrogation of the devices. 18 And based on the return of the 19 -- it's called fingerprinting your ports, 20 okay? 21 So there's no protection that I 22 can see, either from a firewall or other 23 methodology, that would prevent the 24 fingerprinting of those ports so that you 25 understand what processes are running and</p>	<p style="text-align: right;">Page 128</p> <p>1 overflow, what you can do is, once that 2 expected length of a packet is reached, you 3 can then insert commands and specific code 4 after that so that it is executed in memory. 5 And per the -- per the report, 6 they did not appear to have -- or those 7 systems were susceptible to buffer overflow 8 methodologies, and that's in the ATSEC 9 report. 10 Q. So if the buffer overflow 11 methodology is used and a specific code is 12 put into a BMD, what impact, if any, would 13 that have? 14 A. Well, it depends on what your 15 attacking and what the code is. But 16 theoretically, you could change the contents 17 of the local database on the BMD. 18 You could change the CVR. You 19 could change the ballot image that's 20 presented to the voter. 21 I mean, you know, it really 22 depends on what your objective is as an 23 intruder or a hacker at that particular 24 point, as to what you could do. 25 Q. And do you agree that if the</p>

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<p style="text-align: right;">Page 137</p> <p>1 to obtain certification?</p> <p>2 A. Well, the ATSEC report is</p> <p>3 certainly used to identify vulnerabilities.</p> <p>4 The follow-on remediation piece, that's</p> <p>5 entirely up to the County, whether or not</p> <p>6 they want to address those or try to use</p> <p>7 compensating controls for those</p> <p>8 vulnerabilities.</p> <p>9 Q. Did you review any</p> <p>10 documentation from the County regarding how</p> <p>11 they were addressing identifying</p> <p>12 vulnerabilities?</p> <p>13 A. I don't recall reviewing a</p> <p>14 document in which they addressed the</p> <p>15 vulnerabilities.</p> <p>16 Q. And you did not review any</p> <p>17 documents not listed in your report here, at</p> <p>18 page --</p> <p>19 A. Well, I've indicated that I did</p> <p>20 look at the websites for LA County, and I</p> <p>21 didn't list every website and things.</p> <p>22 But the documents listed in my</p> <p>23 declaration are the primary basis for my</p> <p>24 report.</p> <p>25 Q. So there's a -- Item 13-D in</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. And if you go to the fifth page</p> <p>2 of the document, do you see that it lists the</p> <p>3 source code findings review and then the</p> <p>4 staff analysis of that finding?</p> <p>5 A. Yeah.</p> <p>6 Q. And various of these indicate</p> <p>7 that the finding was resolved, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Walking through this</p> <p>10 paragraph 15 of your report, in item C, you</p> <p>11 say, "A static code analysis by ATSEC</p> <p>12 revealed 14 low severity findings," correct?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know whether or not</p> <p>15 those findings are the ones that are resolved</p> <p>16 here in --</p> <p>17 A. So here's what I will say, is</p> <p>18 that some of those findings are addressed in</p> <p>19 this. However, if you look at the resolve,</p> <p>20 they're actually not resolved.</p> <p>21 So basically, they have</p> <p>22 attempted to put in some compensating</p> <p>23 controls to mitigate the effects of those</p> <p>24 particular vulnerabilities.</p> <p>25 Specific is the Air Gap system,</p>
<p style="text-align: right;">Page 138</p> <p>1 your report is, County of Los Angeles VSAP</p> <p>2 2.1 Stat Report, a PDF, correct?</p> <p>3 A. Correct.</p> <p>4 Q. I'm going to put a document</p> <p>5 into the chat, which will be Exhibit 707 --</p> <p>6 709.</p> <p>7 I apologize. This will be 708.</p> <p>8 The document for the record with Bates</p> <p>9 identifier Smartmatic-Lindell 00017735.</p> <p>10 (Exhibit No. 708 marked for</p> <p>11 identification.)</p> <p>12 BY MR. FREY:</p> <p>13 Q. Let me know when you have that,</p> <p>14 Mr. Cotton.</p> <p>15 A. I have that.</p> <p>16 Q. All right. Do you see that</p> <p>17 this is a County of Los Angeles VSAP Tally</p> <p>18 Voting System Staff Report, dated August 14,</p> <p>19 2020?</p> <p>20 A. I do.</p> <p>21 Q. Did you -- is this the document</p> <p>22 you reviewed in forming your opinions on the</p> <p>23 case?</p> <p>24 A. Yes, this is the one that is</p> <p>25 listed in my declaration.</p>	<p style="text-align: right;">Page 140</p> <p>1 and that's used on a number of these cases</p> <p>2 that says, Well, we don't have to worry about</p> <p>3 this because it's an Air Gap system.</p> <p>4 Okay. The challenge with that</p> <p>5 is: One, it doesn't address any insider</p> <p>6 threat. So if a user -- a malicious user has</p> <p>7 authorized access to that Air Gap system,</p> <p>8 then the vulnerability is still there, okay?</p> <p>9 If someone penetrates that Air</p> <p>10 Gap system through island-hopping or some</p> <p>11 other mechanism, then that vulnerability is</p> <p>12 still there. So it's not resolved in the</p> <p>13 formal sense of that word, as in it doesn't</p> <p>14 exist anymore.</p> <p>15 It still exists, but they have</p> <p>16 attempted to put in a compensating control</p> <p>17 for that.</p> <p>18 Q. And the control that is put in</p> <p>19 is meant to protect the integrity of the</p> <p>20 voting results in the election, right?</p> <p>21 A. It's an effort to protect the</p> <p>22 system, yes.</p> <p>23 Q. And so, just so I understand</p> <p>24 your opinions here, are you not concerned</p> <p>25 about -- or are you not taking into account</p>

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<p style="text-align: right;">Page 141</p> <p>1 efforts that would protect the integrity of</p> <p>2 the system if there is still a technical</p> <p>3 vulnerability in the software?</p> <p>4 A. You know, I've been doing</p> <p>5 incident response for a long time. And I</p> <p>6 have been dealing with hackers for a long</p> <p>7 time.</p> <p>8 And I have dealt in the U.S.</p> <p>9 government on the classified side of programs</p> <p>10 as a contractor. And I know the techniques</p> <p>11 and the methodologies by which you can bypass</p> <p>12 these compensating controls. So I recognize</p> <p>13 the fact that they put a compensating control</p> <p>14 in place.</p> <p>15 But if, you know, there's this</p> <p>16 little problem with people in the middle of</p> <p>17 these things, right? How do they implement</p> <p>18 them? How did they set that up? How did</p> <p>19 they configure these systems in conjunction</p> <p>20 with the compensating controls to ensure that</p> <p>21 they weren't exploited, right?</p> <p>22 So you may have heard of</p> <p>23 Stuxnet, that's a pretty famous open source</p> <p>24 vulnerability that jumps Air Gap systems, and</p> <p>25 it does it through devices.</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. And for each of these</p> <p>2 interfaces, are you differentiating whether</p> <p>3 it was on a Smartmatic device or a different</p> <p>4 component of the VSAP system?</p> <p>5 A. So the VSAP system looked at</p> <p>6 all components as a whole. So I didn't</p> <p>7 differentiate that Smartmatic has this</p> <p>8 specific, you know, thing -- only Smartmatic,</p> <p>9 et cetera.</p> <p>10 Q. Item D on your list says,</p> <p>11 "Remote voting is provided by Amazon web</p> <p>12 servers and is open to the public Internet."</p> <p>13 What is the basis for your</p> <p>14 statement there?</p> <p>15 A. Specifically, I believe it's</p> <p>16 the -- within the report, as they're listing</p> <p>17 the dependencies of these different</p> <p>18 components, there's a specific listing in</p> <p>19 there, both on the ATSEC report and this is</p> <p>20 referenced also in the user guide for Amazon</p> <p>21 web services. And so it relies on Amazon web</p> <p>22 services for its functionality.</p> <p>23 Q. And what is your understanding</p> <p>24 as to how it relies on Amazon web services?</p> <p>25 A. My understanding is that it</p>
<p style="text-align: right;">Page 142</p> <p>1 Another common methodology is</p> <p>2 island-hopping, where someone -- either</p> <p>3 witting or unwitting -- establishes a</p> <p>4 connection on an Air Gap system through an</p> <p>5 external wi-fi or other mechanism.</p> <p>6 So there are multiple ways that</p> <p>7 you could bypass these mechanisms. I</p> <p>8 recognize the fact that they are in place and</p> <p>9 they're attempting to use that as a</p> <p>10 compensating control.</p> <p>11 But without actually examining</p> <p>12 the system to determine whether or not those</p> <p>13 controls were effective, is a different</p> <p>14 matter entirely.</p> <p>15 Q. Moving on to paragraph 16 of</p> <p>16 your report, you say:</p> <p>17 "Based on my review of the</p> <p>18 ATSEC source code review report, the</p> <p>19 Smartmatic and VSAP devices have the</p> <p>20 following interfaces that are used for</p> <p>21 data transfer and communications with</p> <p>22 other network devices."</p> <p>23 And then you list A to K,</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 144</p> <p>1 uses the S-3 buckets as a repository for</p> <p>2 data.</p> <p>3 Q. And do you -- what is your</p> <p>4 understanding of whether that -- Amazon web</p> <p>5 service's use is implemented through a</p> <p>6 Smartmatic-manufactured component of VSAP,</p> <p>7 versus some other component of the VSAP</p> <p>8 system?</p> <p>9 A. Well, just if you'd allow me to</p> <p>10 look at the ATSEC, I'll tell you exactly</p> <p>11 which component. Just one minute.</p> <p>12 So it's the ISB.</p> <p>13 Q. What page are you looking at?</p> <p>14 A. On the ATSEC, it's page 15.</p> <p>15 Q. Page 15 -- okay. Next to ISB.</p> <p>16 A. Yeah. "Amazon services is used</p> <p>17 for cloud-based hosting and storage."</p> <p>18 Q. And is this statement here on</p> <p>19 page 15, is that -- that the reference that</p> <p>20 you are relying on for inclusion of this</p> <p>21 Amazon web servers --</p> <p>22 A. That's also referred to in the</p> <p>23 user guide, the user manual as well.</p> <p>24 Q. Did you say before that was the</p> <p>25 user guide for 3.0? Or for 2.1?</p>

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<p style="text-align: right;">Page 153</p> <p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. What's the relevance of that</p> <p>4 statement?</p> <p>5 A. So they had this software</p> <p>6 testing report up there but it was only a</p> <p>7 sliver or small subcomponent of the actual</p> <p>8 software system.</p> <p>9 So while they have that up</p> <p>10 there, just the tally software was addressed,</p> <p>11 and any software that was contained on any of</p> <p>12 the other components were not part of that</p> <p>13 report.</p> <p>14 Q. Okay. So in that particular</p> <p>15 report, it was limited to the tally software?</p> <p>16 A. Correct.</p> <p>17 Q. And did you look at the --</p> <p>18 listed in number I of your report, on 13-I --</p> <p>19 the Consultant Security and</p> <p>20 Telecommunications Testing Report?</p> <p>21 A. Yes.</p> <p>22 Q. And to the extent that that</p> <p>23 included the BMD and other components, would</p> <p>24 that ameliorate your concern in paragraph 19?</p> <p>25 A. Probably not. If I recall that</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. And that was the components of</p> <p>2 the systems we discussed this morning?</p> <p>3 A. That's correct.</p> <p>4 Q. And is it correct that, I</p> <p>5 believe for the Maricopa County system, you</p> <p>6 had pretty much the whole system, right?</p> <p>7 A. Yes.</p> <p>8 Q. But the other four, you were</p> <p>9 only looking at pieces of the whole election</p> <p>10 system in those jurisdictions, right?</p> <p>11 A. That's correct. In all of</p> <p>12 those jurisdictions, I had what I call kind</p> <p>13 of the brains of the system, which is the</p> <p>14 election management system or the EMS. And</p> <p>15 then I had differing components that I was</p> <p>16 able to analyze.</p> <p>17 Q. And you yourself collected the</p> <p>18 Maricopa County system, but I believe other</p> <p>19 individuals had imaged or collected the</p> <p>20 systems in Antrim County, Michigan; Adams</p> <p>21 County, Michigan; Coffee County, Georgia, and</p> <p>22 the other Georgia system; is that right?</p> <p>23 A. Arizona, Michigan, Georgia,</p> <p>24 yes. Those were -- Arizona, I did the actual</p> <p>25 collection or people under my direct</p>
<p style="text-align: right;">Page 154</p> <p>1 document -- and I don't have that in front of</p> <p>2 me right now -- that was primarily concerned</p> <p>3 with the network traffic from these devices.</p> <p>4 Q. Moving on to paragraphs 20 and</p> <p>5 21, these are the paragraphs where you're</p> <p>6 kind of relying on your work prior to this</p> <p>7 litigation; is that right?</p> <p>8 A. Yeah. So these two paragraphs</p> <p>9 were designed to provide a kind of a</p> <p>10 visualization of the state of insecurity for</p> <p>11 the existing voting systems that I have had</p> <p>12 the opportunity to analyze.</p> <p>13 There's a misperception out</p> <p>14 there that because the EAC in this case -- or</p> <p>15 the certification body for those other</p> <p>16 systems -- because those are certified, then</p> <p>17 they are secure.</p> <p>18 And that is a very drastic</p> <p>19 misconception, because there are very serious</p> <p>20 cyber security issues with those systems as</p> <p>21 they exist.</p> <p>22 Q. Okay. And again, so that's a</p> <p>23 -- that's the voting systems you've analyzed</p> <p>24 from Arizona, Michigan and Georgia, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 156</p> <p>1 supervision collected that, and the others</p> <p>2 were provided to me in the form of forensics</p> <p>3 images that had been collected by other</p> <p>4 parties.</p> <p>5 Q. In at least three of those</p> <p>6 instances, the person who had performed the</p> <p>7 collection was at least alleged to have done</p> <p>8 so without authorization, right?</p> <p>9 A. Well, people make a lot of</p> <p>10 allegations. As I looked at what I knew of</p> <p>11 the chain of custody path, I felt confident</p> <p>12 that in all cases, the local election</p> <p>13 officials had authorized those collections,</p> <p>14 and that the people were authorized to make</p> <p>15 those collections. In the case of Antrim</p> <p>16 County --</p> <p>17 (Cross talk.)</p> <p>18 (Reporter clarification.)</p> <p>19 THE WITNESS: In the case of</p> <p>20 Antrim County, they actually had a</p> <p>21 court order to perform that imaging</p> <p>22 process.</p> <p>23 BY MR. FREY:</p> <p>24 Q. Right. For Antrim County and</p> <p>25 then in Maricopa County, you had the</p>

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<p style="text-align: right;">Page 157</p> <p>1 subpoena, correct?</p> <p>2 A. Correct.</p> <p>3 Q. So I am thinking about the</p> <p>4 other three, was the focus of my question</p> <p>5 there.</p> <p>6 A. Yeah, in the -- in those other</p> <p>7 cases, there was implicit authorization by</p> <p>8 the County clerks who were the election</p> <p>9 officials for that collection or for that</p> <p>10 imaging to occur.</p> <p>11 Q. And I guess my question is, the</p> <p>12 person who did the collection was not you,</p> <p>13 nor under your supervision in those three</p> <p>14 instances, right?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay. So now looking at 20 in</p> <p>17 particular, you discussed this CISA Best</p> <p>18 Practices For Securing Election Systems,</p> <p>19 dated November 2022, right?</p> <p>20 A. Correct.</p> <p>21 Q. And you last reviewed it</p> <p>22 September 21st, which is the date before your</p> <p>23 declaration. And I'm assuming -- you checked</p> <p>24 to make sure it didn't change and that it was</p> <p>25 the same?</p>	<p style="text-align: right;">Page 159</p> <p>1 forensics images that are preserved. For</p> <p>2 example, in Arizona, the installation date</p> <p>3 for the Dominion software on their systems</p> <p>4 was, I believe the 6th of August of 2019.</p> <p>5 From that day forward, there was not a single</p> <p>6 system patch that was applied to that</p> <p>7 computer or to those computers.</p> <p>8 From that day forward, there</p> <p>9 was not a single update to the antivirus</p> <p>10 software definition.</p> <p>11 The number of vulnerabilities</p> <p>12 that were created between the time they</p> <p>13 installed that software and the time that I</p> <p>14 imaged that system was, well, roughly about a</p> <p>15 million vulnerabilities a day were created.</p> <p>16 So you can do the math.</p> <p>17 We imaged those systems in</p> <p>18 April of 2021, so you're talking 700 million</p> <p>19 -- at least -- vulnerabilities that existed</p> <p>20 out in the wild, that these systems would not</p> <p>21 have prevented.</p> <p>22 Q. So you are looking at the</p> <p>23 Arizona system there to say that they do not</p> <p>24 comply.</p> <p>25 Anything else?</p>
<p style="text-align: right;">Page 158</p> <p>1 A. Correct. Yes. I do have</p> <p>2 knowledge that that web link now is changed</p> <p>3 to a different link, sometime after that</p> <p>4 point in time.</p> <p>5 But if you do a search for the</p> <p>6 best practices for securing election systems,</p> <p>7 you'll find the proper link.</p> <p>8 Q. And then you say that there is</p> <p>9 recommendations in, it looks like A to H</p> <p>10 areas, right? So --</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And it looks like you</p> <p>13 say what the area is, and then note whether</p> <p>14 the systems you looked at were in compliance</p> <p>15 or not in compliance?</p> <p>16 A. Yes.</p> <p>17 Q. Is that accurate?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So the first software</p> <p>20 and patch management, you say, the analyzed</p> <p>21 election systems do not comply, right?</p> <p>22 A. Correct.</p> <p>23 Q. And what is the evidence that</p> <p>24 they do not comply, I guess?</p> <p>25 A. So the evidence stems from the</p>	<p style="text-align: right;">Page 160</p> <p>1 A. Well, it's not only the Arizona</p> <p>2 system. It was every system that I could</p> <p>3 get, that I actually physically analyzed a</p> <p>4 forensics image on. And it was the same</p> <p>5 situation across the board.</p> <p>6 Q. And that was the five we've</p> <p>7 talked about, right? When we're talking</p> <p>8 about the analyzed election systems, it's</p> <p>9 those five jurisdictions from Arizona,</p> <p>10 Michigan and Georgia, right?</p> <p>11 A. And Colorado, so the --</p> <p>12 Q. And Colorado, yeah.</p> <p>13 A. Yeah. The one exception to</p> <p>14 that in this case is, I didn't get a physical</p> <p>15 image of the Adams County Township. If you</p> <p>16 remember, I stated my scope, and it was not</p> <p>17 the actual physical examination of a</p> <p>18 forensics image on that.</p> <p>19 Q. And for this definition of</p> <p>20 analyzed election systems, that does not</p> <p>21 include LA County, correct?</p> <p>22 A. That's correct. As of yet, I</p> <p>23 have not been able to analyze a single system</p> <p>24 that was utilized in the 2020 election in LA</p> <p>25 County.</p>

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<p style="text-align: right;">Page 161</p> <p>1 Q. And that is the same for all of</p> <p>2 A through H, correct? That -- the analyzed</p> <p>3 election systems you refer to in your report</p> <p>4 do not include LA County?</p> <p>5 A. Yes. Basically, this shows a</p> <p>6 pattern within the voter jurisdictions -- the</p> <p>7 voting jurisdictions -- of a lack of</p> <p>8 attention to detail to cyber security.</p> <p>9 I would welcome the opportunity</p> <p>10 to examine an LA County system to see if that</p> <p>11 pattern continues into LA County.</p> <p>12 Q. And so if we take out Adams</p> <p>13 County or Adams Township, there are four</p> <p>14 jurisdictions that you've reviewed, right?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know how many voting</p> <p>17 jurisdictions there are in the United States?</p> <p>18 A. I don't. I'm obviously limited</p> <p>19 by the opportunities that are presented to me</p> <p>20 to look at. I would love to look at every</p> <p>21 single one.</p> <p>22 Q. Do you know -- do you have an</p> <p>23 approximation of how many voting</p> <p>24 jurisdictions there are in the United States?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 163</p> <p>1 asked.</p> <p>2 Q. And so in that case, I have to</p> <p>3 ask you for each one here so we can</p> <p>4 understand what your testimony is going to be</p> <p>5 -- because it's not listed in the report and</p> <p>6 we don't have the system. So I need to</p> <p>7 understand, you know, the testimony you're</p> <p>8 going to be providing.</p> <p>9 So we'll move onto item B, log</p> <p>10 management. You say the analyzed election</p> <p>11 systems do not comply with CISA</p> <p>12 recommendations.</p> <p>13 What is basis for that</p> <p>14 statement?</p> <p>15 A. Well, there's two aspects to</p> <p>16 that: One, the CISA recommendation</p> <p>17 recommends that you use an aggregated logging</p> <p>18 source. So in some technologies, it's called</p> <p>19 a SEIM, S-E-I-M.</p> <p>20 And basically, what that</p> <p>21 prevents is the changing of logs by</p> <p>22 intruders. So logging itself is conducted,</p> <p>23 both by the application and by the operating</p> <p>24 system itself on these logging systems.</p> <p>25 In the case of the analyzed</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. If it was over 10,000, would</p> <p>2 that surprise you?</p> <p>3 A. No.</p> <p>4 Q. As a cyber security analyst and</p> <p>5 a scientist, do you think that 4 out of over</p> <p>6 10,000 is enough to make a determination as</p> <p>7 to how the jurisdictions operate in</p> <p>8 compliance with CISA recommendations as a</p> <p>9 whole?</p> <p>10 A. I would say that if you're</p> <p>11 provided the opportunity to look at 4, and</p> <p>12 100 percent of your sampling is indicative of</p> <p>13 a certain result, there is a high probability</p> <p>14 that that result will continue on through</p> <p>15 other jurisdictions.</p> <p>16 Q. And those four opportunities</p> <p>17 were brought to you, correct?</p> <p>18 A. They were part of my</p> <p>19 engagements as an expert witness, yes.</p> <p>20 Q. At trial in this matter, are</p> <p>21 you intending to provide testimony with</p> <p>22 examples as to how each of these four</p> <p>23 analyzed election systems do not comply with</p> <p>24 the various CISA recommendations?</p> <p>25 A. I am prepared to do so, if</p>	<p style="text-align: right;">Page 164</p> <p>1 systems, which we have discussed, the</p> <p>2 voting -- or the operating system logs were</p> <p>3 set to 20 megabytes of data retention.</p> <p>4 Well, in a big county with lots</p> <p>5 of activity, that is not enough space to</p> <p>6 store all of the logs covering an election</p> <p>7 time period from October through November,</p> <p>8 right?</p> <p>9 And so logs are overwritten,</p> <p>10 logs are no longer there, and there is no</p> <p>11 independent storage of those logs to preserve</p> <p>12 that data.</p> <p>13 And that is one of the CISA</p> <p>14 recommendations, is that you have an</p> <p>15 independent storage of those logs. And that</p> <p>16 could be part -- part of that Air Gap system,</p> <p>17 but they want you to store those logs</p> <p>18 independently from the systems that generate</p> <p>19 them.</p> <p>20 It's a common hacker tactic</p> <p>21 that if you do get access to a system, you</p> <p>22 know when you accessed it, you know when you</p> <p>23 left it, and you can wipe and delete all</p> <p>24 activities in those logs during those time</p> <p>25 periods with a very simple power shelf</p>

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<p style="text-align: right;">Page 165</p> <p>1 script. And that's a common tactic, 2 technique, and procedure for hacking and 3 unauthorized activity. 4 So the CISA is recommending: 5 One, that you have larger log sizes; and two, 6 that those logs, as soon as they are created, 7 are then sent to an independent storage 8 device, separate from the device that created 9 them. 10 None of these systems had any 11 -- any independent storage device for 12 analysis or just storage, and they were all 13 set to 20 megabytes, which was not sufficient 14 to record the data for the election time 15 period. 16 Q. And that was each of the four 17 jurisdictions where you had the full data? 18 A. That's correct. 19 Q. So network segmentation, you 20 note that the systems partially comply with 21 CISA recommendations. 22 Is -- what do you mean by, 23 "they partially comply"? 24 A. So, in the four analyzed 25 systems, they did make an attempt to Air Gap</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. That particular one. 2 At a higher level, there has 3 been disagreement with what your analysis 4 showed from the entities that actually had 5 the opportunity to review the same data as 6 you, correct? 7 A. Well, that's a misnomer. They 8 didn't review the same data as I did. They 9 didn't review the forensics images. 10 They did not review the same 11 devices that were present in the network at 12 the time that the election occurred. So they 13 did not look at the same data that I did. 14 Q. Did -- in the Coffee County, 15 Georgia data that you looked at, was there an 16 opposing party who also did a review? 17 A. Not as of yet -- at least, I 18 haven't seen a report yet. 19 Q. How about in Antrim County, 20 Michigan? 21 A. J. Alex Halderman provided a 22 report, but that was more geared towards the 23 effects on the database and the election 24 definitions than the actual findings for 25 cyber security pieces. In the Curling case,</p>
<p style="text-align: right;">Page 166</p> <p>1 the election network. But the second part of 2 that is that you have to monitor those 3 networks to ensure that no unauthorized 4 device is present on the Air Gap system, and 5 none of those systems had any monitoring of 6 the network activity on those systems. 7 Q. And how do you know that? 8 A. From my analysis. So they did 9 not -- in order to monitor that, they would 10 have either had to have: A, an independent 11 device that was off of the one of the port 12 switches or resident inside of the network; 13 or they would have had to have had an onboard 14 PCAP collector like Wire Shark that would 15 capture that network traffic. 16 They did not have either of 17 those in any of those four networks. 18 Q. And am I correct that in the 19 case of at least Maricopa County, the 20 opposing party to you in the litigation 21 disagreed with your findings, right? -- your 22 analysis? 23 A. They disagreed with some of the 24 findings, but they did not disagree with that 25 finding.</p>	<p style="text-align: right;">Page 168</p> <p>1 he essentially agrees with my findings on 2 cyber security. 3 Q. And how about in Mesa County, 4 Colorado? Is there another party who has 5 also had the opportunity to review and 6 analyze that data and offer an opinion 7 regarding what it shows? 8 A. If there is, I have not seen 9 that. 10 Q. The next note, on D, it says, 11 "Block suspicious activity. The analyzed 12 systems do not comply." 13 Just at a high level, how do 14 the analyzed election systems not comply with 15 CISA recommendations? 16 A. I'm trying to cut down my 17 verbiage, huh? So basically, what we're 18 looking at here is, it's called an IDS, 19 Intrusion Detection System. And that's a 20 specific form of technology. 21 It can be hardware, it could be 22 application-based -- so that if they see a 23 variance in user activity, for example, or a 24 different device coming -- requesting a 25 remote access, then it can actually block and</p>

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<p style="text-align: right;">Page 181</p> <p>1 someplace, and that appears to be the IBG --</p> <p>2 or the IPB, which is in the Amazon cloud.</p> <p>3 Q. That's your understanding of</p> <p>4 it, correct?</p> <p>5 A. That's my understanding of it.</p> <p>6 And then of course, the BMG is the manager</p> <p>7 for all of the ballot-marking devices, so it</p> <p>8 has to be connected to the ballot-marking</p> <p>9 devices.</p> <p>10 Q. Are you familiar with the term</p> <p>11 "software independence"?</p> <p>12 A. That can be used in a number of</p> <p>13 different meanings.</p> <p>14 If you could define that?</p> <p>15 Q. Sure.</p> <p>16 In the context of voting</p> <p>17 technology in particular, are you familiar</p> <p>18 with the term "software independence" to mean</p> <p>19 that the outcome of the election is</p> <p>20 independent of how the software might</p> <p>21 operate?</p> <p>22 A. I understand the term.</p> <p>23 However, in practice, there is question to</p> <p>24 that.</p> <p>25 And so the software is</p>	<p style="text-align: right;">Page 183</p> <p>1 gave there, you say "manipulation of the vote</p> <p>2 record."</p> <p>3 Are you talking about</p> <p>4 manipulation of the paper ballot, itself?</p> <p>5 A. Well, a ballot-marking device</p> <p>6 produces the ballot. That becomes the paper</p> <p>7 record. So if there's a manipulation prior</p> <p>8 to the production of that paper ballot, then</p> <p>9 that's what I am referring to.</p> <p>10 Q. Okay. And that would be before</p> <p>11 the voter had the opportunity to look at</p> <p>12 their ballot?</p> <p>13 A. No. Typically -- well, it</p> <p>14 depends on the system and how the -- how this</p> <p>15 works. But typically, there is a</p> <p>16 verification splice screen that pops up, and</p> <p>17 they look through the vote selections and</p> <p>18 they say, Yeah, that's what I voted. And</p> <p>19 they press a button, and then that becomes</p> <p>20 committed to paper.</p> <p>21 Q. And do you know whether the --</p> <p>22 at least with respect to the VSAP system in</p> <p>23 2020, whether the voter would then be able to</p> <p>24 review that paper?</p> <p>25 A. I would have to review the</p>
<p style="text-align: right;">Page 182</p> <p>1 primarily responsible for the presenting of</p> <p>2 the ballot, the recording of the ballot, and</p> <p>3 the counting of the ballot.</p> <p>4 So then you're relying on</p> <p>5 external audit mechanisms to attempt to</p> <p>6 determine statistically whether or not the</p> <p>7 election is valid.</p> <p>8 However, those audits are based</p> <p>9 on the actual retained printed ballot. So</p> <p>10 just as an example, if the -- if there was a</p> <p>11 vulnerability that was introduced into the</p> <p>12 system, that between the timeframe where the</p> <p>13 voter approved his vote and the time that</p> <p>14 that vote was actually recorded, if there was</p> <p>15 a vulnerability that allowed the manipulation</p> <p>16 of that vote record, then a limited-risk</p> <p>17 audit would never catch it, because you're</p> <p>18 looking at the modified ballots as the basis</p> <p>19 of your limited risk audit. I mean, that's</p> <p>20 just an example.</p> <p>21 So I understand the term. The</p> <p>22 true software independence, I believe, would</p> <p>23 be only valid if there was absolute cyber</p> <p>24 security assurance on the voting system.</p> <p>25 Q. And in the example you just</p>	<p style="text-align: right;">Page 184</p> <p>1 procedures. I am not familiar with that.</p> <p>2 Q. And we've talked some about</p> <p>3 post-election audits, risk-limiting audits.</p> <p>4 How familiar are you with the</p> <p>5 different audits conducted following the</p> <p>6 presidential election?</p> <p>7 A. Just a top level familiarity of</p> <p>8 it.</p> <p>9 Q. Did you do any analysis of the</p> <p>10 audits conducted in LA County on the</p> <p>11 November 2020 election?</p> <p>12 A. I did not.</p> <p>13 Q. And so do your opinions in any</p> <p>14 way take into account the post-election</p> <p>15 audits that would occur after a presidential</p> <p>16 election?</p> <p>17 A. Well, with the scope of my</p> <p>18 report, there's no impact. You know, the</p> <p>19 audits have no impact as to the findings in</p> <p>20 my report.</p> <p>21 Q. And that's because your report</p> <p>22 is just identifying that vulnerabilities</p> <p>23 exist -- or could exist in the software,</p> <p>24 right?</p> <p>25 A. That's correct. Yes, should I</p>